STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

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DEPOSITION OF JAMES F. GLENN

Volume I, Pages 1 - 283

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(The following is the deposition of JAMES F. GLENN, taken pursuant to Notice of Taking Deposition, under Rule 30.02(f), at the offices of Dorsey & Whitney, 16th Floor, 250 Park Avenue, New York, New York, commencing at approximately 9:11 o'clock a.m., September 3, 1997.)

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P R O C E E D I N G S

(Witness sworn.)

JAMES F. GLENN

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. O'FALLON:

Q. Could you please state your full name for the record.

A. James Francis Glenn.

Q. Dr. Glenn, my name is Dan O'Fallon and I'm representing the State of Minnesota and Blue Cross Blue Shield in an action brought against a number of defendants, including The Council for Tobacco Research.

You currently work for The Council for Tobacco Research; correct?

A. Yes.

THE REPORTER: Just a moment, please. Off the record.

(Discussion off the record.)

BY MR. O'FALLON:

Q. Dr. Glenn, do you understand -- I'm sorry.

Could you tell me your current position?

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A. I'm chairman of the board of The Council for Tobacco Research.

Q. Do you have any other titles?

A. Yes. I'm professor of surgery, University of Kentucky; past chairman of the department; past director of the Markey Cancer Center at the University; former associate dean and chief of staff of University Hospital.

Q. Do you have any other titles at The Council for Tobacco Research? Are you also the president?

A. Yes.

Q. And do you hold any other titles?

A. I'm the chief executive officer.

Q. Anything else?

A. No.

Q. So you're currently the chief executive officer, the chairman of the board, and the president for The Council for Tobacco Research; correct?

A. Yes, sir.

Q. Dr. Glenn, I believe you've had your deposition taken previously; correct?

A. Yes.

Q. Could you give me all instances in which you've had your deposition taken?

A. I can't recall every instance because it goes

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back over 40 years. Mostly relative to medical matters. With regard to The Council for Tobacco Research, I've been deposed on four occasions.

Q. And what are those occasions, sir?

A. The Broin case in Miami, Florida; the Louisiana case; the -- one of the Willner cases in Jacksonville, Florida; and one other deposition by Mr. Motley and his associates.

Q. Was that in connection with the Mississippi litigation?

A. I think it was in connection with several actions in which he is a participant.

Q. Was that the deposition taken on March 18th of this year?

A. I can't tell you that.

Q. When were those other depositions taken? And let's start with Broin. When was the Broin deposition taken?

A. Three years ago.

Q. How about the Louisiana case, when was that taken?

A. Earlier this year.

Q. Has it been within the last two or three months?

A. No.

Q. Was it taken in February?

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A. I can't remember, Mr. O'Fallon. It was taken sometime early this year as I recall.

Q. Okay. And how about the Jacksonville, Florida deposition, when was that taken?

A. Well I think --

I was deposed by Mr. Motley on two separate occasions. The first one was last year.

Q. 1996?

A. Yes.

Q. And then a second deposition in 1997?

A. This year, yes.

Q. And that's the sum total of all the depositions you've given on behalf of The Council for Tobacco Research or as an employee of The Council for Tobacco Research?

A. I can't tell you that. I think it is.

Q. To the best of your recollection, there have been no other depositions that you've given while you've been an employee of The Council for Tobacco Research.

A. I gave one additional deposition recently to one of Mr. Rosenblatt's associates, Mr. Hoag, relative to a class action suit in Florida.

Q. Approximately when did you give that deposition, sir?

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A. About a month ago.
Q. Any other depositions while you were an employee of The Council for Tobacco Research that you can recall?
A. I already explained that to you. I have appeared in a number of medical malpractice --
Q. No, I'm sorry, while you were an employee of the Tobacco Research.
A. While I was an employee of the --
Q. Okay.
A. -- Council for Tobacco Research, I gave medical malpractice depositions.
Q. Okay. Okay. I'm sorry, I was unclear about that. Thanks for clarifying that. So that's --
So in the last nine years -- I think you started with The Council for Tobacco Research in 1987 -- you've also been -- you've also given some medical malpractice depositions.
A. Yes, sir.
Q. Were you testifying on behalf of the plaintiffs or defendants in those cases?
A. Both.
Q. When you were testifying in those cases, were you testifying on issues of liability, or subsequent issues of treatment?

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A. I was testifying on -- on both.
Q. Were you a treating physician in any of those cases?
A. No.
Q. So you were testifying as an expert witness in those cases?
A. Yes, sir.
Q. Approximately how many such depositions have you given in the last nine years? Again I'm looking for a rough estimate, not exactly.
A. Depositions or testimony?
Q. Let's go with depositions first and then I'll ask you testimony second.
MR. MERRITT: This is excluding the ones in his capacity as a CTR person.
MR. O'FALLON: Right. This is excluding the CTR depositions.
A. Possibly six.
Q. And you've testified in trial how many times in the last nine years, excluding anything done on behalf of The Council for Tobacco Research?
A. Again, approximately a half dozen.
Q. Have you ever testified at trial on behalf of The Council for Tobacco Research?
A. No, sir.

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Q. Are you currently scheduled to testify in the Florida class action lawsuit?

A. No.

Q. I'd just like to talk for a quick minute about your testimony and consulting in medical malpractice cases.

Are you part of a group of surgeons or a group of doctors who consults as part of a company?

A. No.

Q. I ask that because there is around the country several search organizations, and certain doctors -- doctors are participants. You aren't one of those; correct?

A. No.

Q. So when you've been contacted in those cases, you've simply been contacted individually?

A. Yes.

Q. Have you throughout your career been a testifying expert in medical malpractice cases?

A. Yes.

Q. Can you give me a rough estimate of how many times you've either been listed as an expert or testified, either through deposition or at trial, in medical malpractice cases?

A. Perhaps 40.

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Q. Currently when you testify as an expert in cases, are you paid an hourly fee?
A. Yes.
Q. What are you paid?
A. Well it depends on the circumstances, whether I have to travel or not, so the fee is variable.
Q. What is the range of the fees?
A. Oh, anywhere from 200 to 400 dollars an hour.
Q. Is there any distinction made there between whether you're giving deposition testimony as opposed to trial testimony?
A. No.
Q. So it's 200 for non-traveling cases and 400 for traveling cases?
A. No, I didn't say that.
Q. Okay. How do you make -- what --
What's a distinction you make there when -- in regarding how much you bill per hour?
A. Time and effort, and how much time I have to spend away from my usual occupation.
Q. What is your current salary at The Council for Tobacco Research?
A. Three hundred fifty thousand dollars a year.
Q. And that's your total compensation that you receive each year? What I mean, I know you hold

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several positions. Is that the total amount you receive as both chairman of the board, CEO, and president?

A. Yes.

Q. Okay. In addition I believe you're also working still as the -- you hold a position at the University of Kentucky?

A. A number of them, yes.

Q. Okay. How much salary or other compensation do you receive as a member of the University of Kentucky College of Medicine?

A. I don't believe that's any of your business, Mr. O'Fallon.

MR. MERRITT: Is there any relevance to his other income? I mean this is --

MR. O'FALLON: I'm just trying to figure out every place he works and kind of the whole package. I guess what I want to know is how much he's receiving from CTR as opposed to his other -- his other employment, so I think there is some relevance.

MR. MERRITT: Is there a way we could -- can you --

Can we pass on this for the time being and come back to it after -- after the break? This is

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obviously --

I understand your -- your argument on relevance, but, you know, it's his other sources of income which may not be, you know, just limited to what he gets from the University of Kentucky. I mean obviously these are -- are very private --

MR. O'FALLON: Well I'm not --

MR. MERRITT: -- things that I don't --

MR. O'FALLON: I'm not after --

Just so we're clear, I'm not after his private investment income and that kind of thing, I'm just basically looking for the income he receives as a doctor.

MR. MERRITT: Is there any way to ask him -- to ask him in a comparative sense?

Well, I'd like to be able to talk to him about --

MR. O'FALLON: Well --

MR. MERRITT: -- maybe answering the question --

MR. O'FALLON: -- I'll pass on this --

MR. MERRITT: -- and maybe give you your --

MR. O'FALLON: -- but I do want to come back to it.

MR. MERRITT: Okay.

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BY MR. O'FALLON:

Q. Approximately how many hours a year do you spend as -- either doing activities connected with your job as CEO, president, or chairman of the board of The Council for Tobacco Research?

A. I've never calculated that.

Q. Well can you give me just roughly? Do you spend 90 percent of your time doing those jobs?

A. Well I'm --

I am essentially in the employ of The Council for Tobacco Research a hundred percent of my time.

Q. But you're also in the employ of other people as well; correct?

A. I have -- I have other activities as well, as most people do.

Q. I understand that. And -- and what I'm --

And that's part of why I'm asking about money, because other people have other activities but other people don't necessarily have other paid activities, and so I'm trying to get some feel for what chunk of your life you dedicate to The Council for Tobacco Research, your working life, not your personal life.

Approximately how many hours do you work per week?

A. About 80 hours a week.

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Q. Of those 80 hours per week, how many of those hours do you devote to your work for The Council for Tobacco Research?

A. I've never calculated that.

Q. What would be your best guess?

A. I don't have a best guess. I don't guess at things. I either know or I don't know.

Q. Well sir, do you think you work more than 40 hours doing your job as --

A. Well --

Q. -- president --

A. -- I've explained to you, Mr. O'Fallon, I'm at the service of The Council for Tobacco Research for whatever number of hours is required, either in person, on the premises, by telephone, or by other means of communication.

Q. I understand that, sir. I'm simply trying to figure out what percentage of your working time you spend performing those tasks, and do you have an estimate for me?

A. No, sir.

Q. So you can't tell me whether you spend 50 percent of your working time every year working at the -- for The Council for Tobacco Research.

A. I am 100 percent employed by The Council for

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Tobacco Research.

Q. Okay. Well you --

Are you also 100 percent employed by the University of Kentucky School of Medicine?

A. Yes, sir. As required.

Q. Okay. So you're 100 percent employed by at least two employers. Is there anybody else that you're 100 percent employed by?

A. Mr. O'Fallon, I don't think you understood the answer and I think your question is naive.

Q. I'm sorry, sir. I guess I'm entitled to be a certain amount of naive here. I'm simply trying to figure out what it is you do and how it is you do it.

A. Mr. O'Fallon, what you want to know is my gross income, and I don't think that's any of your business.

Q. Well sir, actually right now I'm trying to get around that gross-income problem. I'm trying to ask you how many hours you work.

A. Well if we can bring this to closure, let me simply say that my salary from The Council for Tobacco Research constitutes less than half of my total income.

Q. Well that helps me get one piece of information, but there's still another piece of information I'm

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looking for, which is how much of your working life you dedicate to doing your work at The Council for Tobacco Research. Independent of your compensation. I'm trying to figure out whether 50 percent of your time every year is spent doing work for The Council for Tobacco Research and the other 50 percent of your time is doing work at the University of Kentucky, or basically what that mix is. I'm just trying to get some understanding, sir.

A. Well I'll accept your figures. That's perfectly reasonable.

Q. Well whether it's reasonable or not, the question is whether it's true. You're the only one who knows that. Is -- is that --

Would that be your rough approximation, that you spend approximately 50 percent of your time --

A. That would be --

Q. -- working for The Council for Tobacco Research and about 50 percent of your time working for the University of Kentucky and -- and whatever other pursuits you have?

A. I think that's fair.

Q. And less than 50 percent of income comes -- strike that.

Less than 50 percent of your income per year

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comes from your work for The Council for Tobacco Research; correct?

A. Correct.

Q. What I'd like to do is briefly go through your background, and I've got your resume and I just want to ask you some questions about that.

As I understand it, you graduated from medical school in 1952; correct?

A. Correct.

Q. You did your first residency at Brigham Hospital in Boston, and that residency ended in 1954?

A. Yes.

Q. You did another residency in urology at Duke University, and that residency ended in 1959?

A. Correct.

Q. You then remained on at Duke as an instructor in urology through '59; correct?

A. Correct.

Q. At that point in time you moved to Yale, where you became an assistant professor of urology; correct?

A. Yes.

Q. And you did that from 1959 to 1961; correct?

A. Yes.

Q. You were then an associate professor of urology

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at the Bowman Gray School of Medicine in Winston-Salem, North Carolina?

A. Yes.

Q. During that time period, 1961 to 1963, when you were at the Bowman Gray School of Medicine, did you become associated with individuals from the R. J. Reynolds Tobacco Company?

A. I met some of the R. J. Reynolds people.

Q. Who did you meet?

A. I can't remember exactly. But in a social setting.

Q. At that point in time did you have any other contact in a non-social setting with R. J. Reynolds Tobacco?

A. No.

Q. You never did any consulting for R. J. Reynolds during that period of time?

A. No.

Q. From 1963 to 1980 you were a professor of urology at Duke; correct?

A. Correct.

Q. In 1980 you became a professor of surgery at Emory; correct?

A. Correct.

Q. And that's in Georgia; right?

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A. In Atlanta.
Q. And you held that position from 1980 to 1983; correct?
A. Yes. I was Dean of the medical school.
Q. During that entire period?
A. Yes.
Q. You then moved to Mount Sinai School of Medicine here in New York?
A. Yes.
Q. And you were a professor of urology?
A. I was president of Mount Sinai Medical Center, president of Mount Sinai Medical School, and president of Mount Sinai Hospital, as well as being a professor of surgery.
Q. And that position lasted from 1983 to 1987; correct?
A. Correct.
Q. In 1987 you left for the University of Kentucky College of Medicine; correct?
A. Correct.
Q. Why did you leave?
A. I had a fundamental disagreement with the board of trustees regarding a medical matter.
Q. Did you leave voluntarily, or were you asked to leave?

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A. I left voluntarily.
Q. How did you happen to get the job at the University of Kentucky?
A. If you've done your homework, Mr. O'Fallon, you'll find that I was born in Lexington. And I returned to Kentucky to live on my farm there.
Q. Had you --
Had you accepted the job at the University of Kentucky before making your decision to move back?
A. No.
Q. So that job came open and you knew about it through your Kentucky connections?
A. It didn't come open. They offered me a distinguished professorship.
Q. Were you offered the distinguished professorship before or after you made a decision to accept a job with the Council for Tobacco Research?
A. After.
Q. How did you happen to learn about the job with the Council for Tobacco Research?
A. I was approached by Dr. Sheldon Sommers, who was then the scientific director of The Council for Tobacco Research, and subsequently by Mr. William Hobbs, who was then the chairman of the board.
Q. And when were you first approached?

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A. In early 1987 I was asked to join the Scientific Advisory Board.

Q. And did you agree to do that?

A. Yes.

Q. Did you do that with the blessing of Mount Sinai?

A. Yes.

Q. When was the first time you heard of The Council for Tobacco Research or its predecessor, the Tobacco Industry Research Committee -- Council?

A. Probably in the early 1970s.

Q. How did you happen to hear about it?

A. At that time I was directing the urology program at Duke, and as chairman it was my responsibility to obtain funding for research projects, and I became aware of the support offered through The Council for Tobacco Research, although I never obtained any such support.

Q. Did you apply for such support?

A. No.

Q. Did anybody in your department or in the medical school apply for such support?

A. No.

Q. At any time during your tenure --

A. Well wait.

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Q. Oh, I'm sorry.
A. Excuse me, Mr.O'Fallon, you said did anybody in my department or in the medical school?
Q. Or in the medical school, yes.
A. Well I can't speak for the entire medical school. I can speak for my department.
Q. And the answer --
A. I -- I -- I would be --
I would be fairly certain that there were other investigators at Duke, which is a large operation, there was someone somewhere who must have -- certainly must have had CTR support.
Q. Is that how you first heard of CTR, that someone at Duke actually did have money from CTR?
A. I can't tell you how I came to know about it. It was 20 odd years ago.
Q. But to the best of your recollection, at that time when you were at Duke, no one in your department or you applied for funds from CTR?
A. That's correct.
Q. What was your next contact or knowledge about CTR from that time?
A. Well I was aware of it during my tenure as dean of Emory and also during the time I was at Mount Sinai Medical Center.

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Q. Have you or anyone who has been associated with you ever applied for the -- for funding from The Council for Tobacco Research?

A. Oh, what do you mean by associated with me?

Q. Under your direction or in your department.

A. Well faculty members at Emory University School of Medicine, and there were faculty members at Mount Sinai Medical Center.

Q. How about anybody in your specific department?

A. Well I was of the entire medical center; that was my department.

Q. Okay. You were also, though, in the department of urology at Duke and the department of surgery at Mount Sinai.

A. Correct.

Q. Did anybody in those departments, while you were there, apply for CTR funding?

A. Not to my knowledge.

Q. And you have never applied for CTR funding?

A. No, sir.

Q. And when I say "CTR funding," do you understand that I'm including not only grant funding, but contract research and also special projects?

A. Yes, sir.

Q. Prior to 1987 when you were contacted by Dr.

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Sommers, had you ever had any direct contact with the CTR or any of its employees?

A. No.

Q. What did Dr. Sommers or Mr. Hobbs tell you about CTR when they approached you to join the Scientific Advisory Board?

A. That's a pretty broad question. I think they tried to explain the function of CTR, the mechanism of grant awards. They were highly complimentary of the Scientific Advisory Board. And indeed, it was composed of a very distinguished group of medical scientists.

Q. So in early 1987 you agreed to accept a position with the Scientific Advisory Board; correct?

A. Yes, sir.

Q. At what point in time did you make your decision to leave Mount Sinai Hospital?

A. June of 1987.

Q. What was the nature of the dispute you had with Mount Sinai?

A. One of our cardiac surgeons performed a heart transplant without approval of the Commissioner of Health of the state of New York, and without knowing that he needed approval of the Commissioner of Health. There was a very unique law in the state of

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New York at that time that limited organ transplants to certain institutions, and that -- that situation has changed dramatically since that time. I defended our cardiac surgeon. The patient did well. I felt the issue was largely a medical matter.

Our trustees were laymen, with the exception of two or three, and the lay trustees were intimidated by the Commissioner of Health, who threatened them with legal action and stated that it was their personal responsibility, and I felt that that was not the case. And we had a major disagreement about it, and I felt that it was time to accept a generous separation package.

Q. Was legal action instituted?

A. No.

Q. Was there any investigation done by the New York board?

A. Yes.

Q. Were you included in that investigation?

A. Yes, sir.

Q. Was any determination made?

A. People were exonerated on the basis that they were unaware of this peculiar regulation.

Q. Have you ever been personally sued for medical malpractice?

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A. No.
Q. At what time did you accept the job at Kentucky?
A. I think I began in August of 1987.
Q. When did you first interview for that post?
A. I didn't interview, Mr. O'Fallon. They came to me and asked me if I would accept an appointment.
Q. When did they first approach you?
A. Probably July.
Q. Who was it that approached you?
A. Dr. William McRoberts, who was chief of urology, and Dr. Byron Young, who was chairman of the department of surgery.
Q. Did you know those gentlemen previously?
A. Yes.
Q. Were they long-time associates or friends?
A. Friends.
Q. Are you aware that the University of Kentucky has been one of the institutions that's done a fair amount of research on tobacco and for the tobacco industry?
A. Yes.
Q. How were you aware of that?
A. There is at the University of Kentucky an Institute for Tobacco and Health which is funded by state tobacco taxes. And I think the budget there is

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some eight million dollars a year, but I could be in error about that.

Q. Do either of these gentlemen who approached you have any connection with The Council for Tobacco Research?

A. No.

Q. What are your duties -- strike that.

When you accepted the position with the University of Kentucky, what was it your understanding would be your duties and responsibilities?

A. I was given an appointment as professor of surgery in the division of urology, and I was asked to participate in a modest amount of patient care in the University Hospital and in the affiliated Veteran's Administration Hospital, I was asked to participate in the teaching program, and subsequently I was asked to do a number of administrative chores.

Q. Do you still perform all of those tasks at the University of Kentucky today?

A. No.

Q. What do you do today for the University -- at the University of Kentucky?

A. My primary responsibility is patient care.

Q. You no longer teach?

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A. Yes, I do.
Q. Do you still undertake administrative functions?
A. No.
Q. When did you last do the administrative functions?
A. In March of this year.
Q. Approximately how many hours a week would you say you work for the University of Kentucky?
A. Well we've been over this previously, and your estimate was that I gave 50 percent of my time there, 50 percent here. I work about 80 hours a week.
Q. So about 40 hours?
A. Approximately.
Q. Of that 40 hours per week, approximately what percentage of that time is devoted to patient care?
A. All of it, except a modest amount of committee work.
Q. How much of that is devoted to teaching?
A. Oh, one or two hours a week.
Q. Is that teaching a resident-type teaching where you have students in and take --
A. I'm speaking of conferences, teaching conferences. However, virtually all of the patient care is a teaching opportunity. Residents participate in patient care and in the surgery, and

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all of those activities are teaching and learning opportunities.

Q. Typically when you see patients, do you have residents with you?

A. Yes.

Q. Do you currently live in Kentucky? Is that your permanent residence?

A. Yes.

Q. And do you also have a residence here in New York?

A. Yes.

Q. Let's just talk a little bit about your duties with the CTR. It's my understanding in 1987 you joined the CTR as a member of the Scientific Advisory Board; correct?

A. Yes.

Q. What did you do at that time? What were your duties?

A. Scientific Advisory Board reviews and evaluates grant applications from independent investigators attempting to determine the merit of the proposed project and the technical aspects of the project, the budget proposed, the hypothesis to be evaluated, and then determine whether that grant application is competitive with other grant applications. The

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purpose of all that review is to determine the allocation of funds, which are finite.

Q. According to your resume, it indicates that you became the assistant scientific director in 1987.

A. I did.

Q. And is the assistant scientific director automatically a part of the Scientific Advisory Board?

A. No.

Q. Okay. When specifically did you become the assistant scientific director?

A. In July or August of 1987.

Q. When you obtained that position, did you then resign from the Scientific Advisory Board?

A. No.

Q. So you remained a member of the Scientific Advisory Board once you became an employee of the CTR?

A. Yes.

Q. As scientific advisory director, what were your duties?

MR. MERRITT: I'm sorry, I'm going to object to that. "Scientific advisory director," is that --

MR. O'FALLON: Oh, I'm sorry, assistant

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scientific director. I'm sorry, you're right.

Q. As the assistant scientific director of the CTR, what were your duties?

A. They were administrative. Preliminary contacts with prospective investigators, encouraging grant applications where a project seemed to have merit, the paperwork associated with grant administration, and a variety of activities. Oversight of other members of the scientific staff as well.

Q. Who did you report to as assistant scientific director?

A. Dr. Charles Sommers, Dr. Sheldon Charles Sommers, who was the scientific director.

Q. And who did Dr. Sommers report to?

A. To the chairman of the board of The Council for Tobacco Research.

Q. Who was that at that time?

A. Mr. William Hobbs.

Q. Mr. William Hobbs wasn't a doctor; correct?

A. Correct.

Q. Was he an employee of a tobacco company?

A. Not at that time.

Q. He was a former employee; correct?

A. Yes.

Q. Do you know which tobacco company?

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A. The R. J. Reynolds Company.
Q. And what had been his previous position with R. J. Reynolds?
A. He was president.
Q. How many people did you have on your staff as assistant scientific director?
A. Four.
Q. How many total employees did The Council for Tobacco Research have in 1987?
A. I believe there were 18 or 19.
Q. Do you know generally what those employees did?
A. Yes.
Q. Could you tell me in summary terms?
A. Well there were six scientists on the scientific staff, Dr. Sommers, myself and four others; there was a president of The Council for Tobacco Research, who was the administrative operating officer; Mr. Hobbs, in his capacity as chairman; a secretary and treasurer; a controller; a librarian; four clerks or five; an assistant librarian.

MR. O'FALLON: Let's go off the record.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. O'FALLON:
Q. I believe we were at a librarian, four clerks or

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five, an assistant librarian. Anybody else that you can recall?

A. And an office boy.

Q. How big is the library at CTR?

A. Oh.

MR. MERRITT: Excuse me. We're talking now as opposed to '87?

MR. O'FALLON: Well let's talk in 1987.

MR. MERRITT: Okay.

A. Well it hasn't changed.

Q. Okay.

A. It's the same --

Q. How big is the library at CTR?

A. Roughly 20 by 30 feet.

Q. What kind of publications do you collect in the library?

A. General medical and scientific publications.

(Discussion off the stenographic record.)

Q. Is your library available to the tobacco industry?

A. We've never been called on for that purpose. It would be available if they -- if they wished it.

The industry, as I -- is the sponsor of The Council for Tobacco Research, and obviously if they wanted some of it, they could certainly have it.

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Q. And it's your testimony that no one from the industry has ever called your librarian asking for information?

A. I can't testify about calls to the librarian, but certainly I have had no knowledge of any requests from the industry.

Q. Is that something you would normally know?

A. I don't know whether I would or not, but the materials that are in our library are generally available, are public documents, and the sponsor companies would have access to them through normal channels. They wouldn't have to ask us for it.

Q. Are you familiar with a -- an organization known as LS, Inc.?

A. I'm sorry, I must -- I've misunderstood you.

Q. LS, Inc.

A. LS, Inc.

Q. Inc. Incorporated.

A. No, I don't know that term. I know Literature Retrieval Service, which was at one time a tenant in The Council for Tobacco Research, but I don't know the terminology "LS, Inc."

Q. When did it move? When did it leave The Council for Tobacco Research?

A. LS, Inc. was never a part of The Council for

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Tobacco Research, to my knowledge.

Q. When did this Literature Retrieval Service, when did it leave the premises of CTR?

A. Oh, many years ago. Before I -- before I came.

Q. Are you familiar with any corporation that generally provides services to the tobacco industry akin to analyzing research and collecting research on smoking and health?

A. No, sir.

Q. How did you happen to become scientific director in 1988?

A. Dr. Sommers wished to retire.

Q. And he recommended you?

A. Yes.

Q. Who did you report to when you became scientific director in 1988?

A. Mr. Hobbs, the chairman of the board.

Q. And did you basically have the same staff under you that we've now talked about?

A. Yes.

Q. Who was your assistant scientific director?

A. Dr. Harmon McAllister.

Q. Is Dr. McAllister still your assistant scientific director?

A. No, he is the scientific director.

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Q. Did he become the scientific director in 1991 when you came the chairman of the board --

A. Yes.

Q. -- and CEO?

A. Yes.

Q. As chairman of the board, who do you answer to?

A. We have a board of directors of The Council for Tobacco Research consisting of two representatives from each of the now four sponsor companies.

Q. And who are the sponsor companies?

A. The Philip Morris Company, R. J. Reynolds Tobacco, Lorillard, and Brown & Williamson.

Q. When did American Tobacco leave The Council for Tobacco Research?

A. The American Tobacco Company did not leave The Council for Tobacco Research, they were sold and merged with Brown & Williamson.

Q. They were a member of The Council for Tobacco Research during the entire period that they had a separate corporate existence?

A. I can't answer that, that goes back into ancient history, but I believe they were among the founders and were members of the board throughout their existence as an independent entity.

Q. When did Liggett & Myers leave CTR?

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A. I -- I can't tell you. That was many years ago.
Q. Liggett & Myers has not been a member of The Council for Tobacco Research since you joined in 1987?
A. No, sir.
Q. The Council for Tobacco Research has its entire funding from the tobacco industry; correct?
A. Yes, essentially.
Q. And ultimately you answer to the tobacco companies; correct?
MR. MERRITT: I'm going to object to the form.
A. I -- I --
I don't know what your definition of "answer to" is. We -- we function as a fairly independent agency. We receive our funding from the industry and that is voluntary on their part. I solicit from them each year a budget for our administrative overhead and the research projects which we support.
Q. So the tobacco industry provides all the funding for The Council for Tobacco Research; correct?
A. Correct, with the exception that we have from time to time received small contributions from The Tobacco Warehouse Association, The Burley Tobacco Association and other similar entities, but those are

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very minor amounts.

Q. The tobacco industry controls the board of directors; correct?

A. The board of directors consists of executives of the tobacco companies.

Q. So they control the board of directors; correct?

A. Correct.

Q. There's no independent members on the board of directors other than yourself?

A. No.

Q. You are on the board of directors; correct?

A. Yes. I'm the chairman.

Q. So eight of the nine seats on the board of directors of The Council for Tobacco Research are controlled by the tobacco industry; correct?

A. Yes.

Q. And ultimately you answer to the tobacco industry for your actions and the actions of The Council for Tobacco Research; correct?

A. Mr. O'Fallon, I think you're mixing up the activities the board of directors and the Scientific Advisory Board. The Scientific Advisory Board makes the decisions regarding allocation of research funds and they answer to no one except their own conscience and God.

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Q. I move to strike as non-responsive.

I'd just like to repeat my question. My question is that you are answerable to the tobacco industry.

A. Well I'm employed by the industry, if you -- if you put it in that context.

Q. And ultimately, as the president of CTR and as the CEO of CTR, your actions in that capacity are controlled by the tobacco industry.

MR. MERRITT: Object to the form.

A. I don't think so, Mr. O'Fallon. I feel very independent in this position. I function as an executive officer of The Council for Tobacco Research just as I functioned as an executive officer of a medical -- a medical center, the executive officer of a medical school. And in each instance, of course, we had a -- a board of oversight in one capacity or another. So in the sense that my executive and administrative duties are controlled by our board, I suppose technically you'd say so, but as a practical matter our board meets twice a year for approximately an hour on each occasion, and in that period of time our discussions relative -- are generally relative to budget and other similar administrative matters.

Q. But the fact of the matter is that the board

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could terminate you at any time; correct?

A. They could.

Q. You serve at the pleasure of the board.

A. I'm certain I do.

Q. And the board is controlled by the tobacco industry.

A. Correct.

Q. Have you had the opportunity since coming to The Council for Tobacco Research to explore the history of The Council for Tobacco Research?

A. To some extent, yes.

Q. What have you done to explore the history?

A. Well I have had the opportunity to have conversations with various members of our staff, some of whom have had long tenure, I've had an opportunity to look at the annual reports through the years, I've had an opportunity to see much correspondence, and I think I have a reasonable overview of the history.

Q. Have you had the opportunity to review the documents produced in this litigation?

A. Not all of them, I'm sure.

Q. Did you oversee the production of documents from The Council for Tobacco Research?

A. No.

Q. Who did that?

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A. That was done under the supervision of our counsel, and all records were made available.

(Discussion off the stenographic record.)

Q. Prior to joining The Council for Tobacco Research, did you ever have the opportunities to consult individually with the tobacco companies or any of their attorneys?

A. No.

Q. Did you ever have the opportunities to consult with any other scientific people?

A. Well I knew Dr. Sommers.

Q. When did you first meet him?

A. I can't remember exactly. Dr. Sommers is a -- is a very distinguished pathologist and was chairman of the pathology department at Lenox Hill Hospital, held a professorship at Columbia University. I was aware of Dr. Sommers for a number of years before I actually met him.

Q. Did you meet him in 1984 when you came to New York?

A. I think so, or sometime thereafter.

Q. But prior to 1984 you had not met him?

A. No.

Q. Doctor, have you done past research regarding smoking?

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A. I didn't hear the question.
Q. Have you done past research regarding smoking?
A. Not specifically with regard to smoking.
Q. Did you do research that involved smoking in any way?
A. My laboratory at Duke at one time held a grant from the American Medical Association for research on the action of nicotine on smooth muscle of the urinary tract.
Q. Were you involved in that research?
A. I was involved as far as administrative oversight. I did not do the actual laboratory investigation. That was done by technical personnel.
Q. Was your --
Did your name appear on any publication regarding that work?
A. Yes.
Q. What role did you play in the publication?
A. Publication was a -- a book on urinary tract smooth muscle edited by one of my associates, and I contributed one or two chapters to the book.
Q. The chapters you contributed, did it involve this research on the smooth muscle and nicotine?
A. I can't --
This was 25 years ago, and I can't remember

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exactly, Mr. O'Fallon. I remember the grant because it was -- the funding was provided to us by the American Medical Association, which was acting in behalf of the tobacco industry to sponsor research on the actions of nicotine.

Q. So that was money that came from the tobacco industry?

A. Indirectly.

Q. How did you know it came from the tobacco industry?

A. Because the American Medical Association made us aware of that.

Q. Was that work published?

A. In the sense that the book that I mentioned was published.

Q. And that's where I'm -- I'm a bit confused. Was there another chapter in that book that involved this nicotine work other than the chapters -- the chapters you wrote?

A. Mr. O'Fallon, this is so far back in my memory that I just can't recall the details.

Q. Well if you could just do the best you can.

A. Well I've done the best I can.

Yes, the book dealt with the action of nicotine on smooth muscle of the urinary tract.

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Q. Okay. And that included --

The two chapters you wrote dealt with that; correct?

A. I think I participated in the preparation of two of the chapters.

Q. Was it disclosed that some of this research was funded by the tobacco industry?

A. Yes.

Q. And what was the --

A. Actually, the grant was from the American Medical Association.

Q. I understand, but it was my understanding that the American Medical Association was simply passing on money supplied by the tobacco industry.

A. That is not exactly correct. The American Medical Association was functioning much as the National Institutes of Health function in administering public funds.

Q. So the AMA --

A. There's nothing -- there's nothing nefarious about it. It's a perfectly straightforward mechanism of funding medical research.

Q. I'm not suggesting there's anything nefarious about it at all, I'm simply trying to clarify what happened.

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During that time period, did you ever have any contact with the industry regarding that research?
A. No.
Q. Did any of the researchers have any?
A. No.
Q. And as I understand it, you didn't do any of the bench research; correct?
A. Correct.
Q. Do you know what they found concerning the effect of nicotine on the smooth muscle?
A. Nicotine has a very beneficial effect to smooth muscle contraction, smooth muscle of the intestinal tract as well as the urinary tract.
Q. So nicotine has a physiological effect on the bladder; correct?
A. Well it's not just the bladder, it's the smooth muscle of the entire urinary tract, which includes the renal pelvis, the ureter, the bladder, the urethra.
Q. So it's safe to say that nicotine has a wide-ranging physiological effect on the urinary tract.
A. Not wide-ranging. It has a -- it has a -- an enhancing effect on the contraction of smooth muscle.
Q. Would it also be accurate to say that nicotine has a physiological effect on the smooth muscle?

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A. I don't understand the question. I explained it as simply as I can in lay terms. It has a physiological effect, has a pharmacological effect, it has an anatomic effect, it has a muscular effect.

Q. It has a wide-ranging effect on the urinary tract system; correct?

A. No. It has an effect in promoting smooth-muscle contraction.

Let's go back to basics. Do you know what smooth muscle is?

Q. Sir, I'm asking the questions, --

A. I know, but --

Q. -- you know, --

A. -- you still --

Q. -- and I'll continue to do so. You don't have to be condescending to me. I'm trying to do the best I can to ask the questions the best I can. No, I'm not a medical doctor. And so, yes, there are going to be times when I'm going to use different language than you, and certainly if you don't understand my question, let me know and I'll do my best to restate it. But you don't have to educate me, I don't think.

Did you do any other research that in any way implicated smoking?

A. No, I don't think so.

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Q. Are you yourself a smoker?
A. No.
Q. Have you ever been a smoker?
A. Yes.
Q. When did you quit?
A. I think 1976.
Q. What did you do in preparation for today's deposition?
A. I conferred with counsel.
Q. Anything else?
A. No.
Q. Have you reviewed any documents in preparation for today's deposition?
A. Yes.
Q. What documents did you review?
A. Oh, I can't remember all of them, but some documents from our files that I had seen previously but have kept available, some documents from the now-public stolen files of Brown & Williamson Tobacco Company. I -- not recently, but in the past -- have reviewed our annual reports for general familiarity.
Q. How did you happen to get the stolen documents from B&W?
A. You provided them.
Q. Are those documents that have also been produced

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in our litigation?
A. Yes.
Q. You understand I didn't steal them; right?
A. I don't think so.
Q. I just want to make it clear for the record that the documents we've produced are documents that have been produced in Minnesota.
A. Correct.
MR. O'FALLON: Why don't we take a five-minute break and come on back.
THE REPORTER: Off the record, please.
(Recess taken.)
BY MR. O'FALLON:
Q. Dr. Glenn, when we finished talking we were talking a little bit about your preparation for the deposition, and I understand that you have reviewed the documents that I had designated for this deposition; is that correct?
A. Yes, sir.
Q. You've also had meetings with your counsel; correct?
A. Yes, sir.
Q. Approximately how many meetings have you had with your counsel?
MR. MERRITT: Are you talking about in

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preparation for this, or total?

MR. O'FALLON: Yes, in preparation for this.

A. I think four.

Q. Were there any non-lawyers at any of those meetings?

A. No.

Q. Were there ever --

A. With -- with the exception of myself.

Q. Yeah, but with -- no. I assume you don't want a law degree.

A. No.

Q. Were there any law firms other than Debevoise & Plimpton that were present?

A. No.

Q. Approximately what was the total time that you met with your attorneys in preparation for today's deposition?

A. Oh, these were four very brief meetings of less than a half an hour each, including one this morning.

Q. Have you reviewed any depositions in preparation for today's testimony?

A. No.

Q. Doctor, you understand that in addition to being noticed individually, that you've also been

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identified as the individual to testify on behalf of The Council for Tobacco Research on certain topic areas; correct?

A. Yes.

Q. You've been designated to testify concerning public statements relating to health effects of smoking and addiction in scientific research; correct?

A. Yes.

Q. And you're ready to so testify; correct?

A. Yes.

Q. You've been identified as the representative of The Council for Tobacco Research to discuss the health effects of smoking; correct?

A. Yes.

Q. And you're ready to so testify; correct?

A. Yes.

Q. You've been designated as the individual to speak on behalf of The Council for Tobacco Research in relation to addiction; correct?

A. Yes.

Q. And you're ready to so testify; correct?

A. Yes.

Q. And finally, you've been designated as the individual to speak on behalf of The Council for

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Tobacco Research concerning CTR research; correct?

A. Yes.

Q. Just so the jury's clear, I'd like to clarify some terms so we have a frame of reference.

The Council for Tobacco Research is commonly referred to as CTR; correct?

A. Yes, sir.

Q. Prior to becoming The Council for Tobacco Research, The Council for Tobacco Research was known as the Tobacco Industry Research Committee; correct?

A. Correct.

Q. Do you know the year that the -- that CTR became The Council for Tobacco Research?

A. I believe it was 1964.

Q. And just so we're clear, there's going to be times when I'm going to use the two acronyms, that's CTR for Council for Tobacco Research and TIRC for Tobacco Industry Research Committee. Is that okay with you?

A. Fine.

Q. I use those because I don't -- every time I say "Tobacco Industry Research Committee," I end up using something different at the end of it. So TIRC is an easier shorthand for me.

I'd like to talk for a second about public

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statements relating to health. Dr. Glenn, would you agree that as a medical doctor, when you make public statements concerning health, you make sure you tell the complete truth?

A. Yes.

Q. That is, you don't make misleading statements; correct?

A. Not intentionally.

Q. You don't withhold material information?

A. No, sir.

Q. And you try to make statements in a way in which they will be understood by the public; correct?

A. That's right.

Q. You had to do that as a doctor when dealing with patients; correct?

A. Yes, sir.

Q. You've also had to do that in your various posts as head -- as the head of a medical school; correct?

A. Yes.

Q. As you've testified, you've dealt with board members who themselves were lay individuals; correct?

A. Yes.

Q. And you've also had to do that when you've had to make statements on behalf of The Council for Tobacco Research; correct?

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A. Correct.
Q. Now when you make statements concerning health as a medical doctor, you expect people to rely on what you have to say; correct?
A. Well, you're implying that I can control the mental process of the patient, and I can't do that. All I can do is try to be as direct and -- and truthful as I possibly can and hope that that information will be programmed appropriately by the patient.
Q. But ultimately when you make a statement concerning health, you make it with the intent that whoever you're making it to will rely on your judgment; correct?
A. I would hope they would.
Q. And you would find it reasonable if they did so rely on your judgment; correct?
A. I would.
Q. And that especially applies to you as a medical doctor because you have certain expertise; correct?
A. Yes.
Q. You've had years of training and you can reasonably expect that the public can rely on you when you make statements concerning health; correct?
A. I would hope so.

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Q. Similarly, you would expect that the public would rely on the Council for Tobacco Research and its predecessor, the TIRC, when the TIRC or the CTR make public statements; correct?

MR. MERRITT: I'm going to -- I'm going to object to the form of that.

MR. O'FALLON: As compound? Is that what your objection would be, compound?

MR. MERRITT: Well also ambiguity in -- I mean I don't want to make a speaking objection here, but --

MR. O'FALLON: No, I know and appreciate that and that's why I'm asking. Let me try to clean it up.

Q. Similarly, you would expect the public to be able to rely on the Council for Tobacco Research when The Council for Tobacco Research makes public statements about health; correct?

A. I think the answer to that has to be prefaced with an understanding that in the beginning TIRC was charged with a two-fold responsibility; one was to sponsor research on smoking and health, and the second was to serve as a public relations or public information arm for the industry. I think today the scientific community would not accept that dual

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role. And it was a difficult time because science and public relations really are almost incompatible, and I think this is what prompted the decision to separate the information aspect from the research aspect. And The Tobacco Institute was inaugurated as a public information arm for the industry and CTR was left to pursue the scientific interests.

Q. I'm going to move to strike that as non-responsive.

When TIRC was formed in 1954, it wasn't disclosed to the public that one of the purposes of the TIRC was to be the public relations branch of the tobacco industry; correct?

A. I believe it was so -- so stated in the Frank Statement, that TIRC would serve to provide information to the public.

Q. But the information that TIRC was supposed to provide to the public was supposed to be objective information concerning the health effects of smoking; correct?

A. Correct.

Q. What the tobacco industry basically said is here is a subjective organization that we've set up, and we're going to provide you information concerning health effects of smoking; correct?

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A. I don't believe it was stated in those terms, but I think that the gist of it is correct.

Q. And basically the industry set up TIRC as this independent, scientific-type board that the public could rely on for accurate information about smoking and health; correct?

A. I think that's correct.

Q. And so you would agree that, whether as TIRC or later as CTR, that the public was entitled to rely upon the statements made by that organization concerning health; correct?

MR. MERRITT: I'm going to object to the question.

A. I think that's overstating the case. TIRC was formed to -- not to accomplish research itself, but rather to fund biomedical research which would shed further light on the issues of smoking and health and to make that information available publicly.

Q. And one of the ways they made that information available was through press releases and public statements by their directors, who were traditionally doctors; correct?

A. Or medical scientists.

Q. Right.

And you would agree that the public is entitled

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to rely on those medical doctors or medical scientists concerning statements about health; correct?

A. I would agree.

Q. It would certainly be reasonable for the public to rely and expect that TIRC or CTR, when they spoke, spoke the truth; correct?

A. Correct.

Q. And the same duties that would apply to you when you make a statement would also apply to CTR; that is, CTR also would have a duty not to make misleading statements about health; correct?

MR. MERRITT: I'm going to object to that, calling for a legal -- to the extent it's calling for a legal conclusion.

A. I think the answer to that is what I have said before, that TIRC in the beginning had this two-fold function; one was to provide information, the other was to fund research into the questions of smoking and health. And the controversies that existed at that time were widespread. There was a grave difference of opinion in the medical and scientific community regarding the health effects of smoking.

In 1954 when TIRC was established, I would venture that most physicians were smokers, and there

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were serious questions based upon some epidemiological evidence that smoking was a health risk factor. There were also those who felt that there were other risk factors involved that were equally significant such as smog, radon, coal dust, hydrocarbons. You will remember that the asbestos issue had not even been raised at that time. So it's difficult to translate yourself back over 40 years and try to evaluate statements that were made about smoking and health. There was only --

It was 10 years, a full 10 years later that the first Surgeon General report linked smoking with health problems. So in the -- in the sense that TIRC was charged with providing public information, it clearly was entering into this area of -- of serious controversy.

Q. Move to strike as non-responsive.

Sir, would you agree that CTR and its predecessor TIRC had a duty not to make misleading statements about health?

MR. MERRITT: Object to the question.

A. Had a duty not to make misleading statements, is that your -- the question?

Q. Yes, that's the question.

A. I don't think anybody ever made any misleading

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statements, so in the sense --

I don't know what they felt their duty was at that time. Certainly I would not today offer anything that I thought would be misleading about issues of smoking and health or any other health matters.

Q. And that same standard should have applied to your predecessors; correct?

A. I think it did.

Q. And similarly, you would agree that the TIRC or the CTR should not withhold material information from the public concerning the health effects of smoking; correct?

A. I know of no instance in which any information was withheld.

Q. And if we showed you instances where information was available at least to the founders of the TIRC, the tobacco industry, which was not disclosed -- disclosed concerning smoking and health, would you agree that they had a duty also to disclose information?

MR. MERRITT: Object to the form.

MR. O'FALLON: You're right, that's a bad question.

Q. You understood that the tobacco industry formed

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TIRC; correct?
A. Correct.
Q. You would agree that they also had a duty to disclose the information that they had concerning the health effects of cigarettes; correct?
MR. MERRITT: I'm going to object to the question.
A. I can't put myself in a position of the companies or -- or the thought process in 1954.
Q. At the very least, they had a duty not to make misleading statements concerning health; correct?
MR. MERRITT: Object to the question.
A. I don't know what their -- their duty was. You began this line of questioning asking me about my professional standards. I don't -- I -- I can speak for my standards, but I can't speak for those of others.
Q. Do you think that the tobacco industry should be held to a different standard than you yourself are held to?
MR. MERRITT: Object. Object to the form of the question.
A. I -- that's --
You're asking me to make a judgment that I can't make.

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Q. So you're not going to answer my question?
A. No, I'm not -- I simply --
I simply am unable to answer it.
Q. Don't you think corporations should be held to the same duties as individuals?
MR. MERRITT: Object to the form.
Can I just have a continuing objection to any questions about duty?
MR. O'FALLON: Sure.
MR. MERRITT: Okay.
MR. O'FALLON: Would you like that repeated?
THE WITNESS: Please.
MR. O'FALLON: Read it back.
(Record read by the court reporter.)
A. I can't speak for corporate standards. Certainly the industry was as aware, as was the public in general, that there were health risks in smoking. But I think automobile manufacturers know that there are risks to personal safety and health in the products that they produce as well. This is general public information, so I don't think that saying "have a duty to express the potential harmful effects of smoking" is appropriate terminology.
Q. Well let's take another example, and you brought

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up the automobile industry. You understand that in the 1970s Ford knew internally that its Pinto would blow up on collision; correct?

A. I don't know that.

Q. You've read that?

A. I don't know that I read that Ford knew it.

Q. Assuming that Ford did know that its Pintos would blow up upon a rear-end collision, you would agree that Ford had a duty to tell its consumers of that very serious risk of harm; correct?

A. I -- I can't make that judgment. I would assume that they would have modified the product once they identified the problem.

Q. But you would agree at the very least they had a duty to tell the consuming public about that problem once they knew of it; correct?

A. I would assume so.

Q. I mean, certainly if you were going to buy a Ford Pinto or any car and there was a serious risk of it blowing up upon rear-end collision, you would want to know that prior to buying the product; correct?

A. Yes, I would.

Q. And the cigarette manufacturers should be held to the same standard; correct?

MR. MERRITT: Object to the form of the

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question.
A. Well I've -- I've answered that question previously, and I can only repeat what I've said before. I think it was general public knowledge that there were health risks in smoking and I think people have known this for a hundred years. The term "coffin nail" was first used before the turn of the century.
Q. Move to strike as non-responsive.
You would agree that if CTR or TIRC believed smoking caused disease, they would tell the public, regardless of what the tobacco companies might have said; correct?
A. You are asking me what I believe?
Q. Yes.
A. I believe that CTR at all times has been forthright in publishing the results of the investigation that it sponsored. Each investigator is encouraged to publish, and whether the findings are adverse to the interests of the tobacco company is -- is immaterial.
Q. You would agree that a company cannot sell a legal product illegally; correct?
MR. MERRITT: I'm going to object to that as calling for a legal conclusion.

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A. I wouldn't agree with that. I don't think anyone should sell an illegal product.

Q. But you shouldn't also sell a legal product in an illegal fashion; correct?

MR. MERRITT: Same objection.

A. If it is a legal product, it cannot be sold illegally. A legal product would be sold legally. And I'm not a lawyer, but I -- I think the two assumptions there are incompatible.

Q. Well you would agree that it would be wrong to sell a legal product by making misleading statements about that product; correct?

A. I would --

I would agree that that's probably correct, if one knew the statement to be misleading.

Q. You would agree that it would be wrong to sell a legal product by making statements that would tend to diminish health risks associated with that product; correct?

A. Well you're getting out of my area of expertise, Mr. O'Fallon. I don't -- I don't know the ethical answers to your questions. If you will ask me medical questions, I'll do my best.

Q. Well, let me just ask you these questions as a consumer.

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You would agree that a manufacturer shouldn't sell a perfectly legal product by making misleading statements about the health risks associated with that product; correct?

A. You --

There are two assumptions there; one is that the manufacturer is making misleading statements, and selling a legal product. Yes, they were -- the tobacco companies were selling a legal product, and still are. No, I know of no intentionally misleading statements.

I think everybody was well aware of the risks of smoking from the time of the first Surgeon General's report, and even earlier.

Q. You would agree that if the tobacco industry made statements such as stating that its product was not injurious to health when in fact there was evidence in its own files that indicated that the product was in fact injurious to health, that that would be a misleading statement; correct?

A. If they --

If they said it was not injurious to health once they knew that it was. But you must remember the spectrum of time here. In 1954 the issues were not settled. This was a -- it was not known at -- in

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1954 exactly what the risks of smoking were. So to ascribe a misleading statement in that timeframe is -- is -- is not possible.

Q. Originally The Council for Tobacco Research -- Research, which was first known as the Tobacco Industry Research Committee, was formed in 1954 because there were public reports that cigarette smoking may cause cancer; correct?

A. There were the beginning of implications that smoking was associated with a variety of health problems.

Q. And one of the most serious was an indication that cigarette smoking may in fact cause cancer; correct?

A. Well I don't believe the word "cause" was employed in the scientific sense. The tubercle bacillus causes tuberculosis. The relationship between smoking and health has not been that clearcut, and it certainly wasn't in 1954.

Q. I'm going to move to strike as non-responsive.

One of the most serious charges brought against cigarettes in 1954 was that smoking may cause cancer; correct?

A. You use cause in the lay sense or in the scientific sense? Define the -- the term and I'll --

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I'll try to answer.
Q. What level of certainty do you need in order to use cause in the scientific sense, sir?
A. Nobody has ever caused cancer in experimental animals by exposure to smoke or tobacco.
Q. I'm going to move to strike as non-responsive.
What level of certainty do you need in order to use cause in the scientific sense? Does it have to be 95 percent certain that the entity caused disease?
A. I think you would have to exceed that. I think there ought to be clear cause and effect.
Q. So basically you're wanting a level of proof somewhere between 95 percent and a hundred percent, correct, before you would use the word "cause?"
A. I will accept the use of the term "cause" for a variety of diseases associated with the risks of smoking if we define it in the lay sense. It is now said smoking causes cancer, the Surgeon General has applied that warning to cigarette advertising and packaging, and I accept that in the sense that we know perfectly well that the incidence of lung cancer is higher among smokers than it is among non-smokers, but that doesn't mean that it is an absolute cause. There may be other factors involved as well. And we've known this for a long time.

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Q. When you --

When you use "cause," when you use the word "cause" in what you call a scientific sense, are you demanding an absolute level of proof; that is, as close to 100 percent certainty as possible?

A. As close as possible, yes.

Q. And what's the minimal level it has to meet in order for you to use the word "cause?" If it's only 95 percent certain that smoking causes cancer, will you use cause in the medical sense to say that smoking causes cancer?

A. Well I use the term "cause" in two ways, and that's what I'm trying to get at; one is the pure scientific sense where we know that a given agent will result in a -- a -- a given disease process, and the other a causal relationship where the incidence of a disease is much higher when that risk factor is added. And if that's -- is that --

If that's what you're saying with the term "cause," then I will accept it.

Q. Doctor, do you believe it's more likely than not that cigarette smoking causes lung cancer?

A. Again I come back to the definition of cause. I'm not sure that cigarette smoking per se causes lung cancer. Ninety-three percent of smokers never

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get a significant lung problem. On that basis, one has to question whether genetics is involved, as it now is in so many diseases.

Q. So it's --

A. So there may be a genetic predisposition with the patient. There may be other factors such as hydrocarbon, smoke, coal dust, radon, other -- other exposure factors that are compounding the problem associated with smoking.

Q. Doctor, is there one person who you believe has incurred lung cancer as a result of smoking?

A. "As a result" in the term of -- of risk factor, yes.

Q. Do you believe it's more likely than not that one person has had lung cancer caused by cigarette smoking?

A. Define cause for me.

Q. Can you answer my question?

A. No, sir, not until you define the term "cause." And that's what the discussion has been about for the last 10 minutes.

I'm happy to accept the terminology "cause" if we use it in the lay sense, because smokers are more at risk for lung diseases, cardiovascular diseases than are non-smokers, and this is general public

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knowledge. And the industry accepts it. Certainly Council for Research -- for Tobacco Research accepts it. Certainly I accept it personally.

Q. You have testified that cigarette smoking does not cause lung cancer; correct, sir?

A. I have not. I have testified that the term "cause" has to be defined.

Q. You testified before the United States Congress. When asked, "Do you believe that smoking causes cancer?" your answer was, "No, sir." Is that correct?

A. That's correct, because we had defined the term "cause." And I explained to them in exactly the same terms I've used here this morning, that cause and effect in the scientific sense have to be defined.

Q. When a lay person reads your statement that cigarette smoking does not cause cancer, you would agree that it's reasonable for that lay person to conclude that in fact cigarette smoking does not cause cancer; correct?

MR. MERRITT: Object to the question.

A. No, because you're taking that out of context.

Q. But you understand that when you say things like "cigarette smoking does not cause cancer," that it's

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likely that the lay public is going to interpret it in the sense that, well, it doesn't cause cancer; right?

MR. MERRITT: Object to the question.

A. I can't answer for what other people would think or interpret, but a reasonable person would certainly want to know the context in which that answer was given.

Q. Let's go back for a second to the history of The Council for Tobacco Research and its predecessor, the Tobacco Industry Research Committee.

The TIRC was formed in 1954 in large part to reassure the public that the cigarette industry was looking at the health effects of smoking; correct?

A. I don't know. I don't know the motivating factors. I know what the -- the public statements were.

Q. In fact, what they wanted to do was make the public continue to feel good about smoking in the cigarette industry; correct?

A. I don't know that.

Q. And ultimately what they wanted was for smokers to keep smoking; correct?

A. I don't know that.

Q. And the TIRC was, from the beginning, part of

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the cigarette industry's public relations approach to the whole issue of smoking and health; correct?

A. It was so stated in the very beginning that TIRC would accomplish two functions; one was to support medical research, and the other was to make the information public.

Q. But it didn't say that its purpose was to defend the industry; correct?

A. No, it did not.

Q. Or to put all statements about health in the best light for the industry. That wasn't stated; was it?

A. No, sir.

Q. We referred now a couple of times to the Frank Statement, and the Frank Statement is an advertisement that was taken out by the industry in 1954; correct?

A. As I understand.

MR. O'FALLON: Mark this as the next exhibit.

(Plaintiffs' Exhibit 1148 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1148 is a document Bates stamp numbered CTR MN 11309817.

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Doctor, are you familiar with Plaintiffs' Exhibit 1148?

A. Yes.

Q. And this in fact is the Frank Statement to cigarette smokers that we've been talking about; correct?

A. Yes.

Q. This is a document that was taken out and sponsored by the tobacco industry; correct?

A. As I understand it.

Q. Now in this statement the tobacco industry takes on certain duties relating to the public; correct?

MR. MERRITT: I object to the form of the question -- object to the question.

You may answer.

MR. O'FALLON: Why don't we have that read back.

(Record read by the court reporter.)

A. I think they make a statement that they will undertake to do certain things. I don't know whether "duty" is the correct word or not.

Q. Well one of the most important things they do is in the first column toward the bottom where they say, quote, "We accept an interest in people's health as a basic responsibility, paramount to every other

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consideration of our business." Correct?
A. That is what is said.
Q. What they are telling the people is that we accept your health as our basic responsibility, a responsibility that should be paramount to us selling our cigarettes; correct?
A. That's what they have said.
Q. They also state point blank that they believe the products they make are not injurious to health; correct?
A. I think in 1954 they probably believed that.
Q. And if we find evidence that showed that in 1954 they did not believe it, then that would be a misleading statement; correct?
A. I -- I -- I can't put myself in -- inside the heads of the people who wrote the statement in 1954, but I think it was -- is fair to say that in 1954 most people did not believe that tobacco products were injurious to health.
Q. And --
A. Most doctors were smokers at that time. I was. I think the evidence was not in at that point.
Q. In fact in 1954 and before that, the cigarette industry would even make claims about whether their cigarettes were healthier than other cigarettes;

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correct? Do you recall that?

A. I don't recall that.

Q. As part of this pledge to the public, this accepting of a -- of an interest in the public's health, the tobacco industry makes certain pledges, and included in those pledges is the establishment of the Tobacco Industry Research Committee; correct?

A. Correct.

Q. They say in the second column, number one, "We are pledging aid and assistance to the research effort into all phases of tobacco use and health." Right?

A. Correct.

Q. "This joint financial aid will of course be in addition to what is already being contributed by individual companies." Correct?

A. That is the statement.

Q. They state in number two, "For this purpose we are establishing a joint industry group consisting initially of the undersigned." Right?

A. Correct.

Q. And the undersigned are basically the tobacco industry -- the tobacco -- the cigarette manufacturers and some other tobacco industry companies; correct?

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A. Yes, sir.
Q. They then state, "This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE;" right?
A. Right.
Q. In number three they put forth the charge of the committee; right?
A. Correct.
Q. It states, quote, "In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute." Correct?
A. Yes.
Q. Presumably they are saying to the public, "Here will be a scientist you, the public, can rely on;" correct?
A. I -- I think that's a reasonable interpretation, but that's not what it says.
Q. But that's a reasonable interpretation.
A. Yes.
Q. That's a reasonable implication to draw.
A. Yes.
Q. It says, "In addition there will be an Advisory Board of scientists disinterested in the cigarette industry;" correct?
A. Correct.

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Q. So they're suggesting that there's basically going to be this independent group, this independent committee that's going to conduct research; right?
A. Correct.
Q. It says, "A group of distinguished men from medicine, science, and education will be invited to serve on this Board;" right?
A. Yes.
Q. "These scientists will advise the Committee on its research activities." Correct?
A. Yes.
Q. Nowhere does it say that this body, the Tobacco Industry Research Committee, is going to be serving as the public relations arm of the tobacco industry in reassuring the public concerning health; does it?
A. I misunderstand your question.
Q. Nowhere here does it say that one of the purposes of the Tobacco Industry Research Committee is to serve as a voice of the industry in countering all this negative publicity; correct?
A. It doesn't say that, no.
Q. In fact, the implication is is that it won't be that, that in fact it's going to be independent and not subject or a voice for tobacco; correct?
A. That's correct.

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Q. But in fact it is a voice for tobacco; isn't it?
A. It was the tobacco industry's response to a situation nearly a half a century ago.
Q. It was a public relations effort designed to quell the concerns about smoking --
A. No, sir, not that the --
Q. -- because the tobacco industry was concerned about its own sales; wasn't it?
A. I disagree violently with that. Everything that I've reviewed relative to the initiation of TIRC and subsequently CTR indicates that a diligent effort was made to see that the Scientific Advisory Board was constituted of people independent from the industry, scientists of the highest quality and caliber free to pursue the best -- the research they felt best to elucidate the problems of smoking and health. And in fact many, many hundreds of publications that have resulted from work by independent investigators have been adverse to the interests of the companies, but in no way has this been compromised by the industry.
Q. One of the first things that the industry set out to do was to hire a huge public relations firm known as Hill & Knowlton; correct?
A. I believe so. But that's historical information, I have no first-hand knowledge of -- of

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that.

Q. But you have certainly seen Hill & Knowlton documents; haven't you, sir?

A. Yes.

Q. And those Hill & Knowlton documents would indicate that the primary concern of the tobacco industry was to make sure that they addressed this public relations problem so that people wouldn't stop smoking.

A. I don't --

You're asking me for a judgment about what their thought process was, and I'm unable to make that judgment.

Q. I'm going to show you a document that's been previously marked in this litigation as Plaintiffs' Exhibit 397. Have you previously seen Plaintiffs' Exhibit 397?

A. I don't believe so.

Q. This is a document dated December 15th, 1953 entitled "BACKGROUND MATERIAL ON THE CIGARETTE INDUSTRY CLIENT." Do you see that at the top?

A. Correct.

Q. This has been produced out of a collection of documents I believe at the University of Wisconsin from Hill & Knowlton's files. And you have not seen

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those documents previously?
A. I don't believe I've seen this.
Q. You have seen some of those documents when they were shown to you at the congressional hearings; correct?
A. Yes, but they were so -- so badly reproduced that I could scarcely identify what they were.
Q. Let's look on the first page of this document. It states, quote, "The following information was given to us by the presidents of the leading tobacco companies at the Hotel Plaza this morning."
Is it your understanding that the industry first came together on or about December 15th, 1953, to address the issue of smoking and cancer?
A. That's the information I've been given.
MR. MERRITT: Let me -- let me just interrupt you. If you're going to examine him on this, I think he should be given an opportunity to read the thing.
MR. O'FALLON: Well, if he wants a second to read it, I'll take a second to read it. I'm not going to examine him on the whole document, but --
THE WITNESS: Well I'm a slow reader and the document is five pages in length.
MR. O'FALLON: Well --

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MR. MERRITT: He hasn't seen it before, and I think he should have an opportunity to look at it.

Q. This document wasn't shown to you as part of the documents that I identified as part of this deposition?

A. No, sir.

(Witness reads the document.)

Q. Let's go to the first page, Dr. Glenn.

A. Okay.

Q. Under Roman numeral I., "Participants," the third paragraph, it states, "The group was called together by Mr. Paul Hahn, President of The American Tobacco Company. The chief executive officers of all of the leading companies - R. J. Reynolds, Philip Morris, Benson & Hedges, U.S. Tobacco Company, Brown & Williamson - have agreed to go along with the public relations program on the health issue." Correct?

A. Correct.

Q. "Liggett & Myers is not participating in the organization because that company feels that the proper procedure is to ignore the whole controversy." Correct?

A. That's what it says.

Q. So you've got some firms coming together feeling

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that what they need to do is to establish a public relations program, and one member who simply feels -- or non-member who simply feels the whole thing should be ignored; correct?

A. Yes.

Q. Let's go over to page two, paragraph three. It states "The Industry's Position;" correct? That's the title?

A. Correct.

Q. The fourth paragraph states, quote, "They feel that they should sponsor a public relations campaign which is positive in nature and which is entirely 'pro-cigarette.'" Correct?

A. Yes.

Q. That's certainly different than the implication one would get from the Frank Statement; right?

A. But as I read this, the first paragraph under Roman numeral III is that the industry is strongly convinced that there is no sound scientific basis for the charges that have been made. Those were charges relative to smoking and health. Furthermore, in the document, as it goes on, it addressed the issue of research and relationship to the public relations effort and the public information effort, so I don't think this is incompatible.

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Q. I move to strike as non --
A. Clearly the industry was serving its own interest.
Q. The implication of the Frank Statement, I believe you've agreed, is that the cigarette industry was trying to establish this independent body; correct?
A. Correct.
Q. There was no indication there that what the cigarette industry wanted to establish is an ongoing public relations campaign that is, quote, entirely pro-cigarette; correct?
A. But this is refuted in the -- in the document further on.
Q. We'll get to the rest of the document.
They also say, "They are also emphatic in saying that the entire activity is a long-term, continuing program, since they feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future." Correct?
A. Correct.
Q. So that's one of the industry's real concerns in issuing the Frank Statement, they're trying to promote their product and protect it from attack;

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correct?

MR. MERRITT: I object to the form.

A. Correct. And I think in 1954, any tobacco executive participating in this discussion would have to feel that way.

Q. But they don't state that in the Frank Statement, that one of their primary goals here is to make sure that their product is free from attack and is is continued to be sold; correct?

A. The verbiage is different, but I think the implication is the same.

Q. I thought you said the implication was that they were trying to establish this independent body, not somebody who's meant to speak as a mouthpiece for the industry.

A. They did establish an independent body.

Q. Let's look on the third page. In the middle of the page, one of the charges that Mr. Hill was asking the industry about is the following, quote, "Will the companies agree to sponsor new research which will provide definitive answers to the charges?" Correct?

A. It says "will provide definite answers to the charges," but --

Q. You're right. I'm sorry, I misread that, "will provide definite answers to the charges;" correct?

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A. Yes.
Q. The answer is, "A clear-cut answer to this question was deferred for the time being;" correct?
A. Correct.
Q. So at least as of this time they certainly aren't willing to commit to new research that will have any significant impact; correct?
A. No. If you read on, you will see Mr. Hill did not agree with this and warned the companies that they should expect to sponsor additional research. So I think he had a significant impact on the formation of TIRC.
Q. Let's look on page four. "As another indication of how serious the problem is," -- I'm reading from the top -- "the officials stated that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern, especially since tobacco earnings will be much higher next year because of the termination of excess profits taxes;" correct?
A. Correct.
Q. Now under "Other Information" it indicates that Hill & Knowlton --
Which is a big PR firm; correct?
A. Yes.

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Q. That the current plans are for Hill & Knowlton to serve as the operating agent of the companies; right?

A. Yes.

Q. So basically this was from the beginning -- TIRC and the Frank Statement was from the beginning a public relations campaign on behalf of the industry to reassure the public that their products were okay; correct?

A. I -- I can't interpret that. I think that the -- the industry was responding in a very responsible fashion to the questions of smoking and health in establishing a research body made up of independent scientists who would encourage research into questions of smoking and health.

THE REPORTER: We have to change tape. Off the record, please.

(Recess taken.)

(Plaintiffs' Exhibit 1149 was marked for identification.)

BY MR. O'FALLON:

Q. Doctor, Plaintiffs' Exhibit 1149 is a document Bates stamp numbered JH000395 through JH000400. This is, again, a document from the Hill & Knowlton files that are publicly available.

http://legacy.library.ucsf.edu/tid/ysm05a00/pdf
Source: http://tobaccoindustrydocuments.ucsf.edu/docs/jxxd0001

Have you seen this document previously?

A. No, sir.

Q. The very first page is an agenda that's dated January 18th of 1954. Do you see that?

A. Yes, sir.

Q. And the second page is dated January 15th of 1954; --

A. Yes.

Q. -- do you see that?

Now I think we've agreed that the Frank Statement was really the kick-off event for the TIRC; correct?

A. I wouldn't have used those terms, but yes.

Q. The inaugural event?

A. I think it -- it was the initial statement that TIRC would be formed.

Q. Under number Roman numeral I, "ADVERTISING," on the second page of this document, JH000396, it sets forth the distribution of the Frank Statement; correct?

A. Yes.

Q. It states that "The Committee statement, entitled 'A Frank Statement to Cigarette Smokers,' appeared in 448 newspapers, reaching a circulation of 43,245,000 in 258 cities." Correct?

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A. Yes.
Q. "This included, with very few exceptions, all cities of 50,000 or more population, plus all plant or headquarter cities of Committee members." Correct?
A. Yes.
Q. On the second page it talks about "PRESS RELEASE AND PRESS COVERAGE." Do you see that?
A. Yes, sir.
Q. It says, "The press release announcing formation of the Committee was given national distribution and was widely covered by newspaper, radio, TV and the magazines;" correct?
A. Yes.
Q. In other words, this Frank Statement was very widely distributed throughout the country; correct?
A. I would assume.
Q. It would be reasonable to assume that it appeared numerous times in my state, Minnesota; correct?
A. I -- I have no knowledge of that, but I assume it to be true.

(Plaintiffs' Exhibit 1150 was marked for identification.)

BY MR. O'FALLON:

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Q. I have marked as Plaintiffs' Exhibit 1150 a document Bates stamp numbered JH000493 through JH000501.

Have you seen this document previously?

A. No, sir.

Q. This is again a document that's been produced out of publicly available files concerning Hill & Knowlton. Would you like a minute to read this?

A. Yes, please.

(Witness reads document.)

Q. Have you had a chance to review the document, sir?

A. I have.

Q. Let's turn to the second page of Exhibit 1150, Bates number JH000494, and let's just stop -- start at the top.

First of all, you would agree that this is a document that is talking about Hill & Knowlton's dealing with the tobacco industry; correct?

A. Yes.

Q. At the top they say, quote, "The attitude of the men we must directly deal with in the industry is at what -- is at once interesting, and important for us to understand. That is why notes on the four interviews with, quote, research directors, end

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quote, are given at some length. You'll get from them very little information about cancer, pro or con; but you'll find some mighty interesting opinions." Correct?

A. Yes, sir.

Q. One of the first opinions is, quote, "One of the men said, quote, It's fortunate for us that cigarettes are a habit they can't break," end quote; correct?

A. Yes, sir.

Q. Has that ever been made public by the industry, that it's a habit they can't break?

A. I think the industry has known for years that smoking is habituating, and I think that's been publicly acknowledged.

Q. Wouldn't you agree that saying something is a habit that one can't break is akin to saying that that person is addicted to that substance?

A. No, sir, I do not accept that definition of addiction.

Q. Would you agree --

A. Nor would any -- nor would any reliable scientist.

Q. Well, do you ascribe to the definition of addiction that's been adopted or the definition of

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dependence that's been adopted --

A. Dependence and addiction are two different things.

Q. Okay. So you do not accept the American Psychiatric Association's Diagnostic and Statistical Manual IV, the DSM IV, as the accepted definition of "substance dependence."

A. I'm not aware of the definition that they use, but dependence, habituation, addiction are all different terms.

Q. So it would be your testimony that dependence is not synonymous with addiction.

A. No. It's a different word. It means a different thing.

Q. And you've never looked at the accepted definition by the American Psychiatric Association in their Diagnostic and Statistical Manual roman numeral IV; correct?

A. No, sir, I have not.

Q. And you're not a psychiatrist; right?

A. No, sir.

Q. Let's go to the next statement. "Said another: 'Boy! wouldn't it be wonderful if our company was the first to produce a cancer free cigarette. What we could do to the competition!"

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You would agree that the clear implication is that that particular individual thought that cigarettes did produce cancer; correct?
A. Certainly, using the word "cause" in the lay sense.
Q. And you would agree that that statement is directly opposite the statement made by the manufacturers that they don't believe their products are injurious to health; correct?
A. Well we're talking about two different individuals; you were talking first about this man who's being interviewed, and then you're talking about collectively the executives of the company, and I think it stated very clearly that they were not convinced that their product was causing any harm.
Q. Well apparently --
A. But this was in 1954. My goodness.
Q. Apparently a research director of one of the tobacco companies felt that their cigarettes did cause cancer; correct?
MR. MERRITT: Well are you -- are you -- I'm sorry. Are you asking him is that what the document recites, or does he have knowledge that that's in fact the case?
Q. Doctor, do you understand my question?

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A. I understand your question, but I'm not --
I can't put myself inside this man's head. I don't know what he thought about smoking and -- and cancer.
Q. Well we can judge him by his statements; correct?
A. No, I don't think we can.
Q. You don't think we can judge him by his statements, that it would be wonderful if our company was the first to produce a cancer-free cigarette? You can't judge that, by making that statement, he is indicating that he in fact thinks cigarettes do cause cancer?
A. No. I think he's being very flip here. And this is in 1954 and it was before a direct relationship between smoking and a variety of diseases had been scientifically established.
Q. Well --
A. He was making an assumption that some people may believe that smoking may, quote, cause cancer.
Q. That's not what he says there; is it, sir?
A. No, it's not what he says, but you're asking me to get -- get inside his head, and I'm trying to.
Q. I'm asking you to judge him by what is said. And what --

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A. I will --
Q. -- he has said --
A. I will not judge him on the basis of this one statement, taken out of context.
Q. You would agree that if a research director of a tobacco company believed that cigarette smoking caused cancer and his president or CEO knew that, it would be fairly misleading for that CEO to then sign off on a statement saying, well, we believe cigarettes are not injurious.
MR. MERRITT: Object to the form of the question.
A. I don't think that question can be answered. I don't think it's a question, I think it's an editorial.
Q. Research directors are the people entrusted with knowing about the health effects of cigarettes; correct, sir?
A. As a matter of fact, the companies in that era employed research directors to investigate the product and not issues of health. They were not -- they were not conducting internal research on health matters.
Q. Well if they did have internal research and it showed that cigarette smoking is clearly implicated

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in cancer, then it would certainly be misleading for them to have made the statement they did in the Frank Statement that cigarettes are not injurious; correct?

MR. MERRITT: Object --

A. Again it's an editorial.

MR. MERRITT: Let me state my objection. I'm going to object to the question.

Q. The third statement is concern about the stock market fall; correct?

A. Correct.

Q. And the concern that, gee, if everybody smoked just one cigarette less a day, that would add up to 40 billion a year; correct?

A. Correct.

Q. In other words, he's concerned about their sales going down; isn't he?

A. Somebody is.

Q. Well a research director, we know; right?

MR. MERRITT: I'm going to object to the question.

A. Research directors were for the most part non-medical people; they were Ph.D.'s, they many times were engineers.

Q. They were --

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A. They were not -- they were not public health experts and they were not physicians.
Q. Well, but that's a problem of the companies; right? I mean certainly if the companies wanted to hire a medical doctor as a research director, there was nothing stopping them from doing it.
A. They could have.
Q. And they just chose not to.
MR. MERRITT: Object to the question.
A. Well we're talking about 1954. What research were the companies interested in? They were interested in research on their own product, as I -- as I recall it. But that, again, was 45 years ago.
Q. And yet even though that was their main interest, they're willing to go out and make a public statement that their products are not injurious to health, having apparently done no research themselves concerning that issue.
MR. MERRITT: Object to the question.
A. You're asking me what they believed. I accepted that they believed that their product was not injurious, but that was another time and another era.
Q. And the second --
Well, which is even more reason why statements that the tobacco industry is going to make is going

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to have a huge impact, especially when you take out an advertisement that's circulated throughout the country; correct?

MR. MERRITT: Object to the question.

A. I don't understand the question.

Q. The second paragraph says, "At the moment, these men feel thrown for a loop. They've competed for years - not in price, not in any real difference of quality - but just in ability to conjure up more hypnotic claims and brighter assurances for what their own brand might do for a smoker, compared to another brand;" correct?

A. Correct.

Q. "And now, suddenly, they feel all out of bounds, because the old claims become unimportant overnight; they are suddenly challenged to produce just one, simple fact. Walter Winchell told his own audience the nature of this fact, in brief words: 'The burden of proof has shifted. It is no longer up to the scientists to prove that cigarettes cause lung cancer. It is a duty of all concerned to prove that they do not.'" Correct?

A. Correct.

Q. Let's look on page three. This portion of the document basically concludes that, quote, "There is

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only one problem - confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing logic -- every time they light a cigarette." Right?

A. Correct.

Q. And that's really what the industry was about at this point in time, trying to do everything they could to protect their product; correct?

MR. MERRITT: Object to the question.

Q. Correct?

A. You are --

You are interpreting these statements to your satisfaction. I interpret this as an internal document from Hill & Knowlton, which is a public relations firm, and they are trying to define the problem that is presented to them by the industry.

Q. Let's look on page five. The first paragraph follows up under problem two which indicates that, again, one of the goals here is to reassure the public. On page five it states, quote, "The fact is, of course, that no one who has been a heavy smoker is

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going to benefit himself now by falling into a panic, and eliminating the pleasure and comfort of the cigarettes -- of cigarettes. He might just as well go on enjoying his smoke in this interim while research pursues the facts, with full assurance that if any cancer-causing agent is ever found in tobacco, the manufacturers will quickly find a way to eliminate it." Correct?

A. Right.

MR. MERRITT: I think you --

Well let me object to that. I think you left a word out.

MR. O'FALLON: Oh, I'm sorry.

MR. MERRITT: "...is ever really found in tobacco..." I think is what the document says.

Q. Let me read it again. Let me read that last part. It states, "The fact is, of course, that no one who has ever been a heavy smoker is going to benefit himself now by falling into a panic, and eliminating the pleasure and comfort of cigarettes. He might just as well go on enjoying his smoke in this interim while research pursues the facts, with full assurance that if any cancer-causing agent is ever really found in tobacco, the manufacturers will quickly find a way to eliminate it." Correct?

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A. That is what it says.

Q. And again, that's really what this whole TIRC is about, reassuring the public; correct?

A. No, that is not what TIRC was about. They were about sponsoring independent research which would shed further light on issues of smoking and health.

Q. I'm going to hand you a document that has been previously marked as Plaintiffs' Exhibit 398. This is a document that's dated April 9th, 1962, Bates stamped, I believe, CTR MN 2, and there's also another Bates number at the top of the page, HK0039151 through 152.

Have you seen this document previously, sir?

A. I don't think so.

Q. Okay. Do you know who Mr. Brady is, or Dr. Brady?

A. No.

Q. You do know who C. C. Little is; correct?

A. Yes.

Q. C. C. Little was the director of TIRC; correct?

A. Dr. Little was director of TIRC. He was president of what later became the American Cancer Society. He had been president of the University of Maine and the University of Michigan. He founded the Bar Harbor Laboratory and introduced the first inbred

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strain of mice, which opened up whole new vistas for various types of research. He was an extremely distinguished individual.

Q. And again, someone the public should be entitled to rely on when he makes statements concerning health; correct?

A. Correct.

Q. In this memo at the second paragraph it states --

Well first let's go to the first paragraph. It says, "After nearly two years with TIRC, and in an attempt to clarify my feelings about our program - past, present and future - the following will convey a few thoughts on the matter." Correct?

A. Correct.

Q. So it appears that this was one of the employees of TIRC; correct?

A. If I had to speculate about it --

I don't remember this gentlemen's name, but I would imagine that he may have been one of the early members of the scientific staff.

Q. Okay. He states, quote, "Historically, it would seem that the 1954 emergency was handled effectively. From this experience there arose a realization by the tobacco industry of a public

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relations problem that must be solved for the self-preservation of the industry." Correct?

A. Correct.

Q. So again he's indicating that the TIRC was a public relations effort which was necessary to the self-preservation of the industry; correct?

A. He doesn't -- he doesn't say that.

Q. That's the clear implication; right?

A. He said --

No, it is not. He said there arose a realization by the tobacco industry of a public relations problem that must be solved for the self-preservation of the industry.

Q. Okay.

A. He's looking at the industry's position, --

Q. Okay. Let's --

A. -- not the TIRC position.

Q. Well let's look at the fourth paragraph, first sentence. He says, "To date, the TIRC program has carried its fair share of the public relations load in providing materials to stamp out the brush fires as they arose." Correct?

A. Correct.

Q. So it would appear that TIRC has been an integral part of the tobacco industry's effort to

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stamp out these claims of health problems associated with cigarette smoking; correct?

A. I think you're over-interpreting. That's not what he says. I agree to your reading of the sentence but not to your interpretation.

This is an interesting document because it goes on to say, "I believe a few more doctors are giving up smoking, not because they want to but because of the collective pressures from both medical and lay media."

Q. Again emphasizing the need for a counter reaction on behalf of the tobacco industry; correct?

A. No. I think it just states the case as it was in 1962, that -- which was before the Surgeon General's first report, and this typifies the -- the confusion, controversy and ambivalence that surrounded the whole issue of smoking and health at that point in time.

Q. Well it actually typified the pressure that was being brought to bear in some circles that was threatening the industry, at least according to the industry's own internal documents; correct?

A. No. That again is an editorial.

(Plaintiffs'' Exhibit 1151 was marked for identification.)

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BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1151 is a document Bates stamp numbered 2022200161 through 163.

Have you seen this document previously?

A. Yes.

Q. This is a memo from Helmut Wakeham to Mr. J. F. Cullman III. Are you familiar with those two individuals?

A. Yes.

Q. Helmut Wakeham was at one time the research director of Philip Morris; correct?

A. Yes.

Q. Mr. Cullman was the president; correct?

A. Yes.

Q. The subject matter is the, quote, "'Best' Program for C.T.R.;" correct?

A. Correct.

Q. At number one Mr. Wakeham goes through to state the objective or purpose of CTR; correct?

A. With his interpretation.

Q. Right. His interpretation. And again, this is one of the people who has been working with the industry, and, of course, this is an industry statement about an organization they fund and control; correct?

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MR. MERRITT: Well I'm going to object to that.

A. They fund the CTR, that is correct.

Q. Right. They --

He states the objective or purpose of CTR, quote, "To aid and assist research into tobacco use and health, and to make available to the public factual information on this subject." Correct?

A. Correct.

Q. He then goes on at number two to state, quote, "It has been stated that CTR is a program to find out, quote, the truth about smoking and health.'" Correct?

A. I don't know whether that quotation is correct, --

Q. Well --

A. -- "the truth about smoking and health." I've never seen it written like that.

Q. But isn't that similar to what you've testified about, that the goal of TIRC and CTR was to establish the truth?

A. No, I didn't say that.

Q. You've never said that.

A. I said issues of smoking and health.

Q. Okay. But would you agree generally that one of

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the missions of CTR was to find out the truth about smoking and health?

A. Well what I'm questioning here is where that statement came from. It looks as if he is making a quotation from some document, and I'm unfamiliar with that particular phrase occurring in any document.

Q. Well, would you agree that that is basically what the industry was saying the purpose of TIRC was from the beginning?

MR. MERRITT: When you say "that," you mean what?

MR. O'FALLON: That statement. Let me rephrase it.

Q. Would you agree that from the beginning, the industry has basically alleged or implied that the purpose of CTR and its predecessor, TIRC, was to find out the truth about smoking and health?

A. The statement that the industry made was that they would investigate the issues of smoking and health.

Q. Was the implication, either stated in the Frank Statement or stated after that, that the industry would find out, quote, the truth about smoking and health? Wasn't that the clear implication of the Frank Statement and subsequent statements made by the

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industry and by TIRC?

A. I don't know that this particular quotation was ever published in any materials of TIRC, CTR, or the industry, so I cannot subscribe to this. The Frank Statement uses different verbiage.

Q. Regardless of the verbiage, the precise verbiage that you -- that is used, wouldn't you agree that the implication of the statements made by the tobacco industry were that the TIRC and the CTR were designed to find out the truth about smoking and health?

A. CTR and TIRC have both funded independent research by investigators and a host of institutions nationwide and worldwide. They have encouraged publication in every instance. The publications have not been uniform in relation to the interests of the tobacco industry; in fact, hundreds of publications that TI -- CTR has been acknowledged -- in which CTR has been acknowledged are adverse to the interests of the industry, namely, selling their product. So in the -- in that sense, yes, we are searching for scientific truth.

Q. I'm going to move to strike the majority of that answer as non-responsive. I'm going to ask it again.

Wouldn't you agree that the clear implication of the statements made by the tobacco industry about

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TIRC and CTR were that these organizations were designed to find out the truth about smoking and health?

MR. MERRITT: I'm going to object to the form of the question in terms of the lack of definition in -- in the statements that you're referring to.

If you understand it, you can answer.

A. Science is truth.

Q. Dr. Wakeham goes on to state that the goal of CTR was never to simply find out the truth; correct?

MR. MERRITT: I'm going to object to that. Are you asking if that's what this document says, or are you asking him to characterize it?

MR. O'FALLON: My question stands.

Would you like it read back?

THE WITNESS: Yes, please.

(Record read by the court reporter.)

A. I don't -- I don't see that in the document.

Q. All right. Here's what he writes, quote, "What is truth to one is false to another. CTR and the Industry have publicly and frequently denied what others find as 'truth.' Let's face it. We are interested in evidence which we believe denies the allegation that cigarette smoking causes disease."

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Correct?

A. Well that's Dr. Wakeham's comment, and I've read a number of -- of Dr. Wakeham's memoranda, which are legion, and he is simply expressing a Wakeham opinion again, and this has no relationship to the way CTR functioned. This was an expression by an employee of one of the companies written to his boss, and as I interpret it, trying to gain favor from his employer, but it has nothing to do with -- with CTR or TIRC policy or function. This is an internal memorandum from one notoriously verbose employee to his boss.

Q. This is a statement by a research director of a major cigarette manufacturer which is in fact funding and controlling the very entity which he's addressing, --

A. No, you're reading --

Q. -- The Council for Tobacco Research; correct?

A. No. You're -- you're misinterpreting this. This is an internal memorandum in the company, it discusses Dr. Wakeham's view of the world, and it has nothing to do with the way CTR actually functioned.

Wakeham had no influence on the -- on the function of CTR. The Scientific Advisory Board determined the course for CTR and determined the research it would support.

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Q. Fact of the matter is is a lot of research was done outside the Scientific Advisory Board; correct?

A. No, a lot was not done outside the Scientific Advisory Board.

Q. Special projects were funded on behalf of the industry which weren't cleared through the SAB; correct?

A. That's correct.

Q. So in that instance --

A. Perfectly legitimate.

Q. In that instance CTR was being used as an arm of the industry to gather information that the industry found useful in defeating allegations of health risks of cigarettes; correct, sir?

A. Let's --

No, sir, that is not correct. That's -- that's your editorial. The special projects, which numbered only something around a hundred in number as opposed to several thousand research projects accomplished under the Scientific Advisory Board aegis, the special projects were a perfectly legitimate, reasonable undertaking. They were done at the -- at the request of the industry. They frequently examined issues of smoking and health, they frequently examined areas of general public interest

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such as the sick-building syndrome, for example. Special projects were a relatively small part of the total operation of CTR.

Q. The fact of the matter is you never publicly disclosed in a full, paid ad taken out in 448 newspapers that part of the CTR was now being used to simply do research on behalf of the industry; correct?

A. I don't know when special projects were initiated, but they were not certainly extant at the time of the Frank Statement, if that's what you mean.

Q. What I'm asking --

A. Neither were --

The Scientific Advisory Board hadn't been appointed either.

Q. I'm asking you when did CTR take out the public ad in 448 newspapers advising the people of this country that what had originally been formed as an independent entity was now being used to conduct the research of the tobacco industry for purposes of defending litigation?

A. I don't -- I don't see any obligation to do that. Special projects were legitimate research, accomplished legitimately, and CTR merely served as the disbursing agent for those projects at the

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request of the sponsor companies. And there were very good, valid reasons for that.

Q. One of those good, valid reasons would be so that the industry could distance themselves from any results; correct?

A. No, sir.

Q. You would also agree that certainly any documents relating to special projects should not now be claimed as privileged in this litigation in order to protect them; correct?

MR. MERRITT: Object to that as calling for a legal conclusion.

A. I can't answer that.

Q. I mean, CTR wants everything it does to be publicly known, so we shouldn't have to be fighting issues of privilege concerned CTR and research on special projects; correct?

MR. MERRITT: Object to the question.

A. I don't understand the question.

Q. It's your testimony that it wasn't the lawyers who directed the special projects?

A. The special projects were, I think, sometimes identified by attorneys, sometimes identified by the manufacturers. Always done under the sponsorship of the industry.

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Q. But through the auspices of the CTR; correct?

A. Only as a disbursing agent.

I'm sure you know the intricacies of grant funding in universities and clinics, other institutions. The CTR was very familiar with the mechanism of funding and the way to deal with university bursars and other officials, and it was a simple matter for CTR to serve as a disbursing agent. None of the funds used for special projects came from the scientific budget.

Q. None of the funds and none of the special projects were run through the standard procedures that CTR applied to every other grant or contract; correct?

A. The special projects were just what was said, they were -- they were commissioned studies. They were not reviewed by the Scientific Advisory Board. They were done at the request of the companies. Perfectly legitimate.

Q. The --

The companies certainly could have solicited these projects and ran them through the SAB just like everybody else where somebody would have to look at them to determine whether they were valid and important; correct?

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A. They could have done that, certainly.
Q. But they chose not to.
A. They chose not to.
Some of the special projects were funded by investigators who were funded by both mechanisms, both as a special projects and as competitive investigator.
Q. And CTR never disclosed to the public that it was now serving as basically a procurer of research for the industry --
A. Yes, it did.
Q. -- for these special projects.
A. You're wrong.
Q. When did you disclose that?
A. You're in error.
Q. When did you disclose that?
A. In every publication that resulted from a special project, the accreditation was given "This research was accomplished as a special project of The Council for Tobacco Research."
Q. And it's your testimony that every special project was published.
A. No, I didn't say that. I said every publication that -- carried the tag line.
Q. But not all the public --

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Not all the research was published; correct?
A. Not all the research was published, as far as I know.
Q. Let's go back to Dr. Wakeham.
A. Is it -- is it essential?
Q. I think it's essential --
A. I'm so tired of Dr. Wakeham.
Q. I think it's essential for the jury to understand what the industry thought about its own organization, sir. So yes, I do think it's important.
A. Stop with what the industry thought. This is Dr. Wakeham having one of his flights of fancy.
Q. Yeah, well --
A. They are numerous, as I've told you.
Q. You seem to know a great deal about Dr. Wakeham. I can only assume that you know that in part by what you've been told by your attorneys.
A. No, sir. I've read a lot of his documents.
Q. Have you read all his internal memos, sir?
A. No.
Q. Have you requested to read all his internal memos?
A. No.
Q. What you've read are those documents your

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attorneys have shown you; correct, sir?
A. Yes. And what you've shown me.
Q. All right. Now on number three, Dr. Wakeham states, "What are the -- What then are the alternatives? Somehow all caveats and platitudes aside, we must assume that CTR exists for the good of the Industry." Correct?
A. Well that's Dr. Wakeham's commentary and his editorial.
Q. Well we've seen other documents that would back that up now; haven't we, sir?
MR. MERRITT: I'm sorry. Back what up?
MR. O'FALLON: Back up his statement.
A. Well that's not true. It's simply not true. And I think if you will refer to our earlier discussion, the function of The Council for Tobacco Research has been to pursue independent investigation of issues related to smoking and health.
Q. But not to pursue the truth about smoking and health; correct?
A. Science is truth. We've discussed that, too.
Q. So you would agree that it's always been one of CTR's aims, stated aims to find out the truth about smoking and health; correct?
A. I think it's been CTR's aim to explore the

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issues of smoking and health. Our research has gotten more and more fundamental, basic. We are now elaborating disease mechanisms in a fashion that wouldn't have been possible in 1954. But --

Q. Let's -- let's look at Option A. And again, he's talking about several alternatives for CTR; right?

A. This is Dr. Wakeham telling Mr. Cullman, his president, how he, Dr. Wakeham, would structure CTR. It had no effect on CTR. None of Dr. Wakeham's protestations or projections have been employed in the direction of CTR.

Q. Rationale number one is "Pro bono publico; institutional public relations - the industry is interested in human welfare and alleviation of human suffering; therefore, the public should love and respect us and buy our products." That's clearly one of the underlying public relations motives behind TIRC, the Frank Statement, and CTR; isn't it, sir?

A. That's Dr. Wakeham again, far beyond the purview of a research director, I would think.

Q. But the fact of the matter is is that the industry has used TIRC and CTR as an integral part of its public relations in order to assure the public that there's no problem with smoking and that people

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should continue to buy their products; correct?

MR. MERRITT: Object to the question.

A. That is incorrect.

Q. And the fact --

A. CTR does not function as a public relations arm and has not since the inauguration of The Tobacco Institute.

Q. And the fact of the matter is they also employ individuals like -- who go before the bodies like the Congress who again tell the public that there's no causal link established between cigarette smoking and cancer; correct?

A. I have not said that. I have said there is a link between smoking and health.

Q. But you will not say that smoking causes cancer; will you, sir?

A. Because I'm not sure of it scientifically. If you want to use cause in the -- in the lay sense as the Surgeon General's office has used it, I will accept that.

Q. Okay. Has CTR ever taken out an ad that says we now accept that cigarette smoking causes lung cancer? As we use that term in the lay sense, have they ever taken out that ad?

A. That -- that is not --

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Don't you understand? That is not the function of The Council for Tobacco Research. We are funding 20 million dollars of basic biomedical research in a -- in a broad variety of institutions nationwide and worldwide. We are trying to get at the fundamental causes of cancer, cardiovascular disease, a host of other illnesses. We are very focussed now on genetics and other basic problems that are intrinsic to disease processes. And our -- our mission is not one of public relations and has not been since the early days, 40 years ago.

Q. Move to strike as non-responsive.

A. Oh, that's very responsive.

Q. The fact of the matter is you've never taken out an ad that states that we --

A. We are not in the advertising business.

Q. Sir, please don't interrupt me.

You have never taken out an ad that states point blank we now accept that cigarette smoking causes cancer as defined by the lay public; correct?

A. That's your statement.

Q. And it's a correct statement.

A. It's a correct statement. We are not in the advertising business.

Q. You've never taken out a statement or an

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advertisement that says The Council for Tobacco Research now agrees with the Surgeon General's statement in 1964 that cigarette smoking causes cancer.

A. Let's go back to causation, because you -- that's a --

Your question implies that we know what you mean by cause.

Q. I'm using it as used in the 1964 Surgeon General's report. You have never taken out -- The Council for Tobacco Research and for that matter the tobacco industry has never taken out an advertisement that says we now accept the findings of the 1964 Surgeon General's report that smoking causes cancer.

A. We've never argued with that statement either.

Q. Option B as listed on page two of Dr. Wakeham's memo -- Dr. Wakeham's memo is to "Use the CTR program as a means of establishing expert scientific witnesses who will testify on behalf of the Industry in legislative halls, in litigations, at scientific meetings, and before the press and the public;" correct?

A. That's what Dr. Wakeham is conjecturing.

Q. In fact CTR has advised the industry in litigation; correct?

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A. CTR has advised the industry?
Q. Yes. Members of CTR have advised the industry in litigation.
MR. MERRITT: I'm going to object to the question.
A. Not to my knowledge, and certainly not in my tenure.
MR. O'FALLON: Let's go off the record. Why don't we take a break for lunch and come back at 1:15.
MR. MERRITT: 1:15 or 1:50?
MR. O'FALLON: 1:15. Is that enough time?
MR. MERRITT: Uh-huh, I think so.
THE REPORTER: Off the record, please.
(Luncheon recess taken at 12:12 o'clock p.m.)

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AFTERNOON SESSION

(Deposition reconvened at 1:25 o'clock p.m.)

BY MR. O'FALLON:

Q. Doctor, Dr. Wakeham's memo was talking a bit about research done by CTR on behalf of the industry, and you and I have had some discussions about special projects. Is it your understanding that special projects started in 1966?

A. I think that would be about right.

Q. And then they ran through 1990?

A. After I got to the CTR, I think there were two or three still outstanding, and they were just funded out as agreed upon.

Q. Is it your understanding that during that, I guess, 24-year period, that approximately 17 and a half million dollars were spent on special projects?

A. I've never seen an exact number, but I -- I would expect it would be in that range.

Q. I want to turn for a second back to Dr. Wakeham's memo and back to a statement that we've talked about before. And again it's the stated purpose or stated objective or purpose of CTR. And he states that one of the stated objectives is, quote, "To aid and assist research into tobacco use

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and health, and to make available to the public factual information on this subject."

Would you agree that that was the original purpose of CTR?

A. I think that's fair. That was not the way it was stated, but I think that's fair.

(Plaintiffs' Exhibit 1152 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1152 is a document Bates stamp numbered CTR MN 11311164 through 66. It's entitled "FOR: TOBACCO INDUSTRY RESEARCH COMMITTEE, FOR RELEASE IN YEAR-END EDITIONS BUT NOT BEFORE DECEMBER 27TH, 1954."

Have you seen this before?

A. No, I don't believe so, Mr. O'Fallon.

Q. Okay. On the side it indicates that it's from Hill & Knowlton; correct?

A. Correct.

Q. And again Hill & Knowlton was the public relations firm that represented the TIRC early on; correct?

A. Yes.

Q. And it states that it's a statement by Timothy V. Hartnett, Chairman, Tobacco Industry Research

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Committee; correct?

A. Yes.

Q. Okay. He states that "By the end of 1954, the Tobacco -- Tobacco Industry Research Committee will have approved about a quarter of a million dollars for specific scientific research projects into public health problems. During the early part of 1955, this amount should be at least matched again in some grants -- in more grants actually made to doctors and scientists, hospitals and research institutions."

He then goes on to state, quote, "This is one measure of the strides made by the Tobacco Industry Research Committee toward fulfilling its pledge to the American people made last January. That pledge was to sponsor independent scientific research into tobacco use and felt and to make the facts known to the public." Correct?

A. Correct.

Q. So one of the statements that CTR made early on, this is 1954, was that it would make the facts known to the public; correct?

A. Correct.

Q. I'd like to next hand you a document that's been previously marked as Plaintiffs' Exhibit 1090.

I'm sorry.

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This is a document that's Bates stamp numbered 501932947 through 2968. It's entitled on the front of it "SURVEY OF CANCER RESEARCH with emphasis upon POSSIBLE CARCINOGENS FROM TOBACCO" by Claude E. Teague, Jr., 2 February 1953."

Have you seen this document previously?

A. No, sir.

Q. Do you know who Mr. -- Dr. Teague is?

A. No, sir.

Q. This is a document that was produced by R. J. Reynolds, and I would ask you to assume with me that Dr. Teague is in fact a Ph.D. scientist.

I'd like you to look at the third page of the document, but which has a 2 at the bottom of the page, and it's last three Bates numbers 949. Do you see that?

A. That is now marked page two.

Q. At the bottom.

A. Yes.

Q. Then the last three Bates numbers there along the side are --

A. 949.

Q. Okay. I'd like you to look at number one, "OBJECT." He states that "The object of this report is to give a broad, general survey of cancer research

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with emphasis on studies actually or potentially related to carcinogens from tobacco." Correct?

A. Correct.

Q. Then I'd like you to flip back to 963. Number at the bottom of the page, 14. Do you see that?

A. All right.

Q. Do you see that page?

A. Yes.

Q. I'd like you to read under Roman numeral number V., "CONCLUSIONS." He states, "The increased incidence of cancer of the lung in man which has occurred during the last half century is probably due to new or increased contact with carcinogenic stimuli. The closely parallel increase in cigarette smoking has led to the suspicion that tobacco smoking is an important etiological factor in the induction of primary cancer of the lung. Studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung."

Would you agree that R. J. Reynolds, who stated in 1954 that it would undertake people's health as a basic responsibility, had a duty to tell the public that studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco

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smoking and incidence of cancer of the lung?

MR. MERRITT: Object to the question.

A. This was --

This is very well stated and very early on. 1953, I think we -- we were just seeing the emerging data. And he has summarized it very well, that there is a -- a parallel increase in the amount of smoking and -- and primary lung cancer, and it just reinforces the risk factor of smoking.

Q. However, when the industry took out its Frank Statement, it stated point blank that we believe the products we make are not injurious to health. This is fundamentally inconsistent with that statement; correct?

A. Well I think the statement --

MR. MERRITT: Let me just --

I'm going to object to the question. Go ahead.

A. I think the statement was made by the executives who came together to form the research committee. Here is a scientist who has examined the literature. He -- this is not work he's reporting for himself, he is summarizing conclusions from his review of the literature. And I haven't read this closely, as you are well aware, but is this the sort of white paper that reflects thinking at the time. It doesn't say

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that smoking causes lung cancer, it simply says there's a relationship. And I think that's good insight, and I think his statements are appropriate.

Q. Don't you agree that it's fundamentally misleading for a tobacco company to make a statement to the public that they believe the products they make are not injurious to health when their own scientists, those people best able to assess the problem, are telling them the opposite, which is that the studies tend to confirm --

MR. MERRITT: Well I'm going to object.

Q. -- the relationship between prolonged tobacco smoking and incidence of cancer of the lung?

MR. MERRITT: I'm going to object as lacking in foundation. There's no -- you say that --

Are you representing that this is an R. J. Reynolds scientist?

MR. O'FALLON: Yes.

A. I don't --

I don't find anything inconsistent there. As I've said, I think the executives were not convinced at that point in time, nor were many people in medicine, --

Q. Don't you believe --

A. -- that --

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Q. I'm sorry.
A. -- that there was a -- a causal relationship between smoking and lung cancer. The epidemiologic data we were just beginning to accumulate.
As Dr. Teague points out here, they were looking back over 50 years, during which time there had been an increase in lung cancer, at least in diagnosed lung cancer, and there had been an increase in smoking.
I would point out that there are many flaws in looking at retrospective data, particularly with relation to cause of death. Cause of death was not well established in -- in most instances in this country until the last half century. Many people early on who died of pneumonia as a diagnosis may well have had lung cancer. So the data are -- are soft. But clearly Dr. Teague was looking at new -- new material coming in that was suggestive of a relationship.
I don't think it's inconsistent that the industry executives did not necessarily accept this. Many people in the medical community and scientific community didn't accept this at that point in time.
Q. Don't you think that a company that states that they accept an interest in people's health as a basic

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responsibility, paramount to every other consideration in their business, has a duty to make it known to the public that their own internal analysis indicates and tends to confirm the relationship between cigarette smoking and lung cancer?

MR. MERRITT: Object to the question.

A. I don't know about the duty, responsibility, but what Dr. Teague is addressing here is information that was -- was generally available; so the companies were not withholding anything from the public, the information was already in the -- in the medical literature.

Q. They were withholding from the public their own analysis of that evidence and replacing it with statements that are fundamentally inconsistent with their own analysis; correct?

A. No. That's your editorial. They asked for this report, I'm sure, from Dr. Teague. I think it's --

What little I've read of it, it looks like he put it together very well. And it addresses his analysis of work done by others, so all of this was in the public domain. There were no secrets being withheld.

Q. But in the Frank Statement, the cigarette

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companies are basically saying that the public literature that that's been reported is inconclusive, whereas their own expert is saying that it tends to support the relationship; correct?

A. No, no. He -- he is not making a conclusion here.

Q. Well --

A. He's making an observation that there's a parallel increase in smoking and lung cancer.

Q. He doesn't call it an observation, he calls it a conclusion; doesn't he, sir?

A. No.

Q. It's under Roman Numeral V, "CONCLUSIONS;" correct?

A. Well it's conclusions to his investigation. But he -- he merely says the parallel increase in cigarette smoking has led to this suspicion that tobacco smoking is an important etiologic factor in the induction of primary cancer of the lung.

Q. But he then goes on to say that studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung; correct?

A. Tend to confirm. That's -- that's an observation, it's not a conclusion.

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Q. It's listed under "CONCLUSIONS" and he states it as a conclusion.
A. Well it's a conclusion of his paper.
Q. It's a conclusion of his analysis of the data; correct?
A. Uh-huh.
THE REPORTER: Your answer?
THE WITNESS: Yes.
Q. You would agree that once the tobacco manufacturers decided that the causal connection between lung cancer and cigarette smoking was proven, they had a duty to disclose that to the general public; correct?
A. Well we're back to a discussion of causal relationship. And there are many factors that have been incriminated with lung cancer, not the least of which is a genetic tendency, so I can't comment on a causal relationship and I certainly can't comment on the duty of the corporations.
Q. Is it your testimony that epidemiological studies do not demonstrate a cause-and-effect relationship?
MR. MERRITT: Object to the form.
A. Epidemiologic studies will indicate a link or association of factors but frequently do not address

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all of the factors involved and do not conclusively prove a causal relationship. If we speak of cause and effect scientifically, we have to invoke the agent that will consistently produce a given disease or defect.

Q. And you would agree that for the past 90 years there's been an ongoing human study on cigarette smoking; correct, sir?

A. Little longer than that.

Q. But the cigarettes were really first mass produced at the turn of the century; correct?

A. Correct.

Q. And the evidence that we have back from those ongoing human studies, these epidemiological studies, overwhelmingly demonstrate a connection between cigarette smoking and lung cancer, correct?

A. No.

Why is it that 93 percent of smokers do not get any pulmonary disease?

Q. Not everybody exposed to asbestos gets asbestosis. That doesn't mean there isn't a causal connection; right, sir?

A. Causal in the lay sense, if you wish, but it does not demonstrate conclusively that -- that smoking per se causes --

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We may turn up here 20, 30 years down the road and find that there is a definite gene in certain individuals that will lead to lung cancer if indeed other inciting factors are introduced such as smog, other air pollutants, radon, asbestos, cigarette smoke, whatever.

Q. The great majority of people who get lung cancer in this country have been smokers; correct?

A. The, yeah, majority. But 20 percent of people who die of lung cancer have never been smokers.

Q. And 80 percent of people who die of lung cancer have been smokers; correct?

A. Correct.

Q. But until there's a hundred percent of people who die of lung cancer --

A. No.

Q. -- that are smokers, you aren't going to accept a cause-and-effect relationship; isn't that true?

A. Neither part of your question is true. It isn't true that I won't accept it. I accept a causal relationship in the sense of -- in the lay sense that cigarette smoking is a risk factor for lung cancer. It's also a risk factor for cardiovascular disease, for emphysema, for a variety of illnesses.

Q. CTR continued through the '50s to contend that

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there was no causal connection proven between cigarette smoking and lung cancer; correct?

A. That's correct. And they were pointing out exactly what we've been talking about, the definition of cause.

Q. I'd like to show you what's been marked as Plaintiffs' Exhibit 304. This is a document Bates stamp numbered 105408490 through 499.

Have you seen this document previously?

A. No, sir.

Q. This is entitled a "REPORT ON VISIT TO U.S.A. AND CANADA, 17th APRIL TO 12th MAY 1958" by H. R. Bentley, D. G. I. Felton and W. W. Reid. Are you familiar with any of those individuals?

A. No, sir.

Q. Are you familiar with a company known as the British-American Tobacco Company?

A. Yes, sir.

Q. This is a document that was produced by the British-American Tobacco Company.

I'd like you to look on the second page under "ITINERARY." Do you see where it sets out the various people they visited on this trip?

A. Looks like a whirlwind tour.

Q. They had four visits with people from the

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Tobacco Industry Research Committee; correct?

MR. MERRITT: Are you asking whether that's what this document says?

MR. O'FALLON: Correct.

A. I see visits with Dr. Little, Dr. Hockett, and with the Scientific Advisory Board of TIRC.

Q. Looks like the first visit was actually on April the 28th with Mr. Hoyt and Mr. Thompson; correct?

A. Yes, I see that.

Q. Then the next visit was on May 5th with the Industry Technical Committee of TIRC, Richmond; correct?

A. Correct.

Q. And that's with Mr. Hanmer, --

Who was he at the time?

A. I have no idea.

Q. Okay.

-- Mr. Hoyt and Dr. Hockett; correct?

A. Correct.

Q. And Dr. Hockett was who at that time?

A. Dr. Hockett was the assistant scientific director.

Q. Okay. Then on May 8th there was a visit with Dr. Little and again Dr. Hockett; correct?

A. Correct.

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Q. Dr. Little at that time was the scientific director.

A. Correct.

Q. And finally on the -- on May the 10th, a visit with the Scientific Advisory Board of TIRC; correct?

A. I see that.

Q. Look at the next page. Under the "INTRODUCTION," these gentlemen indicate that from their contact in the U.S.A. and Canada, they sought information on numerous subject matters; correct?

A. Correct.

Q. One of those subject matters was the extent to which it is accepted that cigarette smoke causes lung cancer; correct?

A. Well he goes on to define causation.

Q. Right. And I'll get right to that.

You're looking under the subsection called "'CAUSATION' OF LUNG CANCER;" correct?

A. Correct.

Q. It states, "With one exception, parenthetical, H.S.N. Greene, end parenthetical, the individuals whom we met believed that smoking causes lung cancer if by, quote, causation, end quote, we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link."

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Correct?

A. Yes, that's what it says. I would disagree with part of that.

Q. But that's what the document says; correct?

A. Correct.

Q. And this is based on discussions with numerous people throughout the tobacco industry, including four visits with people from the TIRC; correct?

MR. MERRITT: I'm going to object to that as calling for a conclusion. I don't know how you think that Dr. Glenn is going to know what this thing is based on.

Q. Certainly what this appears to be; correct, doctor?

A. I'm not sure what your question is now.

Q. Sure. My question is that these conclusions were made after visits with numerous people in the American tobacco industry, including four visits with the -- with individuals from the TIRC.

A. As according to this agenda, which I accept.

Q. It says, quote, "In the U.S.A. only Berkson, apparently, is now prepared to doubt the statistical evidence and his reason -- reasoning is nowhere thought to be sound." Correct?

A. That's what it says. But I'm not familiar with

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Dr. Berkson.

Q. Let's look to the eighth page of this document, or what's marked at the top page eight, last three Bates numbers are 498.

Do you see that, where it says "CONCLUSIONS" at the bottom?

A. Yes.

Q. "CONCLUSIONS." It says "1. Although there remains some doubt as to the proportion of the total lung cancer mortality which can fairly be attributed to smoking, scientific opinion in U.S.A. does not now seriously doubt that the statistical correlation is real and reflects a cause and effect relationship." Correct?

A. That's correct, that's what it says.

Q. At this time TIRC is still performing a public relations function; correct?

A. This is '58. Yes.

Q. CTR --

I mean TIRC at this time did not take out an advertisement or make a statement that said that they believed that smoking causes lung cancer if by causation we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link; correct?

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A. They did not take out an ad because this is an interpretation by many different scientists and observers of data that were then beginning to accumulate. I would find fault with -- with some of this. I don't know who Dr. Berkson is, but Dr. Huebner I know and his name is misspelled, so I -- you know, when they -- I knew Harry Greene very well, a wonderful man. I can't accept that this document reflects anything but the bias of the three individuals named on the -- on the frontispiece.

Q. And you understand that the three individuals named on the frontispiece are employees of British-American Tobacco Company; correct?

A. I do because you have told me that.

Q. Okay. Do you understand that British-American Tobacco Company wholly owns the Brown & Williamson Tobacco Company?

A. Yes, sir. I'm well aware of that.

Q. Okay. So you're well aware that these are tobacco men making statements about a serious disease relating to their business; correct?

A. Correct.

Q. I'd like to show you a document dated June 4th of 1957. I think I've actually got to mark this.

(Plaintiffs' Exhibit 1153 was marked

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for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1153 is a document Bates stamp numbered CTR MN 11313128. Again, this is a press release put out by Hill & Knowlton; correct?

A. Appears to be.

Q. And it's put out on behalf of the Tobacco Industry Research Committee; correct?

A. Appears to be.

Q. This is a statement that's going to be released to the public for public consumption; correct?

A. Correct.

Q. And again the title of it is "HARTNETT SAYS STATISTICS DO NOT ESTABLISH CAUSES;" correct?

A. That's correct.

Q. And --

A. And I -- and I subscribe to that.

Q. And the general gist of this press release is, again, that it's not proven that lung cancer causes disease; correct?

MR. MERRITT: I'm going to object to the question.

A. Would you restate the question?

Q. The general gist of this press release is, again, that it is not proven that lung cancer causes

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disease; correct?

MR. MERRITT: Same objection.

A. Well lung cancer causes disease? I'd certainly go along with that.

Q. Well how about -- I'm sorry, you're right.

The gist of this press release is, again, that it has not been proven that smoking causes lung cancer or disease; correct?

A. It -- Dr. -- Mr. Hartnett's statement is that a statistical study of the sort accomplished by Hammond and Horn does not prove a causal relationship in the scientific sense. That's what he's saying and that's what many people have said.

Q. It doesn't say anywhere down there "scientific sense;" does it, sir?

A. No, but that's what he's -- that's what he's addressing.

Q. Well how do you know that, sir?

A. Because I can read.

Q. Well he's addressing, again in a document that's intended to be read predominantly by non-scientists, --

A. Well you're playing with words.

Q. -- he's stating --

Well --

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MR. MERRITT: I'm going to --

Q. -- let's not -- wait. Let me finish my question. Okay? I'll just ask you that you let me finish my question.

He's saying, in a document intended to be distributed to the public, the vast majority of whom are not scientists, simply that statistics will not prove cause-and-effect relationships; correct?

MR. MERRITT: Object to the question as lack of foundation.

A. Well if I can be allowed to read from the document, he says -- very fair statement -- quote, "Statistical studies often have an important role in research. Their function, however, is to suggest possible areas for further and more definitive investigation using experimental techniques. They do not prove cause-and-effect relationships," unquote.

Q. And the gist of that statement is --

A. There's no gist. It's very baldly stated that statistical studies suggest areas for further definitive investigation using experimental techniques and they do not prove cause-and-effect relationships in the scientific sense.

Q. So in 1957, when TIRC wants to make a statement to the public, it says there's no cause-and-effect

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relationship proven, yet when it talks to individuals, other scientists from the tobacco industry, it concedes that there's a causal link.

MR. MERRITT: Object to the question. Lack of foundation.

A. I don't know what they conceded. Everybody by that -- by -- by this time, by the late '50s, were beginning to suspect the relationship between smoking as a risk factor and the occurrence of lung cancer.

Q. The word "risk factor" is nowhere in this statement; is it, sir?

A. In what statement?

Q. The statement I have in front of you, Plaintiffs' Exhibit -- what's the exhibit number?

A. 1153.

Q. Nowhere in this statement does the Tobacco Industry Research Committee concede that smoking is a risk factor for lung cancer.

A. I don't see --

I don't see the words "risk factor" here. But my -- my statement remains the same.

Q. They do not concede anywhere here that smoking is a risk factor for lung cancer; correct?

A. Everybody knew it.

Q. And yet these folks felt the need to dispute it.

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A. It's not --

This is not disputation, this is a statement of fact. Statistical studies are very useful in their way, but they don't prove cause and effect in the scientific sense.

Q. The basic gist is they're trying to cast doubt upon any causal relationship between smoking and lung cancer; isn't that true?

A. I don't accept that. No, I don't accept that. I think this is a -- a very thoughtful statement.

(Plaintiffs' Exhibit 1154 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1154 is a document Bates stamp numbered CTR MN 11313243 through 44. Again, this is another Hill & Knowlton press release; correct?

A. Correct.

Q. And it's a press release on behalf of the Tobacco Industry Research Committee; correct?

A. Yes.

Q. It's for release Monday, July 15th of 1957; correct?

A. Correct.

Q. It says "SCIENTIST COMMENTS ON BENZPYRENE

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REPORT;" correct?

A. Correct.

Q. This states, quote, "The following statements -- The following statement was made by Dr. Robert C. Hockett, associate scientific director of the Tobacco Industry Research Committee, in connection with today's news reports from Washington quoting the U.S. Surgeon General as saying benzpyrene had been found in cigarette smoke."

He states, quote, "The question of the presence of benzpyrene in cigarette smoke has been under investigation for a number of years, and it has been widely discounted as a significant factor in connection with lung cancer by scientists familiar with the work.

"There are a number of reasons for this.

"Scientists have not actually succeeded in isolating the substance from tobacco smoke." Correct?

A. Correct.

Q. You would agree that if the tobacco industry had in their own files proof that benzpyrene occurred in cigarette smoke, that this statement made on behalf of them and their industry representatives would be a misrepresentation; correct?

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MR. MERRITT: Object to the question.

A. No, I don't agree with that.

Q. You would agree that, at the very least, if the tobacco industry had in its own files evidence that confirmed the presence of benzpyrene in tobacco smoke, it had a duty to disclose that fact to the public.

A. Benzpyrene does occur in tobacco smoke, and that's well known.

Q. But they stand --

A. But I would call your attention to your own document where Dr. Ernst Wynder of the Sloan-Kettering Institute, who is a leading proponent of the cigarette theory of lung cancer, reported that "The benzpyrene content of tobacco tar is not more than 2 million -- 2 parts per million which, according to our experiments, is not sufficient to produce the type of activity noted in our animals painted with tobacco tar."

Q. He also --

A. In other words, the benzpyrene is there, but it may or may not be causing. We still don't know what the etiologic factors may be, what the -- what all the carcinogens might be in tobacco smoke or in many other substances.

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Q. Doctor, does this public statement state, quote, "Scientists have not actually succeeded in isolating the substance from tobacco smoke?" Doesn't it state that?

A. "Scientists have not actually succeeded in isolating the substance from tobacco smoke."

Q. So that's a point-blank denial that scientists have succeeded in isolating benzpyrene from tobacco smoke; correct?

A. Correct. But we know now that there is benzpyrene in tobacco smoke.

Q. I'm asking about 1957.

A. I can't tell you what --

In 1957 I was winning the Korean War for you.

Q. Well sir, unless I have my history right -- wrong, in 1957 you were probably back from the Korean War.

A. Well I was.

Q. And, you know, all of my uncles also fought in the war. I don't think that that's really relevant to what we're talking about right here.

A. Well --

Q. The fact of the matter is, sir, is that scientists -- is that this document, this public statement made by the C -- by the Tobacco Industry

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Research Committee, states point blank that scientists have not actually succeeded in isolating the substance from tobacco smoke; correct?

A. I -- I see that. I don't know whether that's true or not.

Q. Well if it's not true, then it's a misleading statement by the Tobacco Industry Research Committee; correct?

A. I don't know because I was not there, and I don't know the extent of research with benzpyrene at that time.

Q. I'd like to show you a document that's been previously marked as 1049. This is a document Bates stamp numbered 500945942 through 5945.

Have you seen this document previously?

A. No, sir.

Q. This is a document authored by Dr. Alan Rodgman. Do you know who that is?

A. No, sir.

Q. Dr. Rodgman is a research scientist for RJR Tobacco, and this is a document that was produced from RJR Tobacco's files.

Under paragraph Roman numeral I, "HISTORICAL," it says, "In 1954 the first report of the presence of a carcinogenic, parenthetical, cancer-producing, end

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parenthetical, polycyclic hydrocarbon 3,4-benzpyrene in cigarette smoke was published." Correct?

A. That's what it says.

Q. That's in part what triggered the Frank Statement; correct?

A. I have no idea.

Q. Why don't you take a quick look at the Frank Statement that's Exhibit 1148. It talks about recent reports on experiments with mice. Do you know if part of those experiments included the notion that benzpyrene had been identified in tobacco condensate?

A. I don't know that and you're asking me to -- to conjecture about what people knew in 1954, and I simply can't do that.

Q. Okay. So you can't --

You can't tell me whether or not that was one of the studies that was being addressed in the Frank Statement; correct?

A. No.

Q. Okay. Let's look down to the fourth paragraph. It says, "As described in RDR, 1956, No. 9, we in the R. J. Reynolds Tobacco Company Research Department corroborated the published findings with respect to 3,4-benzpyrene, obtained this compound in crystalline form, and positively identified it as a constituent

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of cigarette smoke on the basis of its chemical and physical properties." Correct?

A. Correct.

Q. So in 1956 R. J. Reynolds Tobacco Company had definitively identified benzpyrene in cigarette smoke; correct?

A. I guess so. I accept what is written here.

Q. And yet its own representatives at the TIRC a year later make a public statement denying that it's been isolated from tobacco smoke; --

A. He may not have known it.

Q. -- correct?

Well he should have known it; correct?

A. Not necessarily.

Q. R. J. Reynolds shouldn't have allowed this statement to go out when it knew from its own research that the statement was false; correct?

A. That's your -- that's your editorial, but I have --

You know, transmission of information is not an instantaneous or universally applicable event.

Q. But a company that takes as its primary responsibility the health of individuals, allows an organization that it formed and funded to make statements saying that we will disclose the facts

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when we know them, should then not allow that organization to make a statement it knows to be false; correct?

A. That's your statement, Mr. O'Fallon, not mine.

Q. And you would disagree?

A. I would point out in your document that "There is no evidence that any of these compounds," speaking of the polycyclic hydrocarbons, "will produce cancer in man."

Q. Read on.

A. "Nonetheless, there is a distinct possibility that these substances would have a carcinogenic effect on the human respiratory system."

Q. Read on.

A. I agree with that.

Q. Read on.

A. "Medical experience has shown that man responds to various chemical substances in the same manner as experimental animals."

Q. Read on.

A. "It follows therefore that it would be better for the consumer if cigarette smoke were devoid of such compounds."

Q. And R. J. Reynolds should have disclosed that to the public as well; correct?

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A. I don't know that. This is -- this is very early in the investigative phase of -- of potential carcinogens and you're asking me to speculate about something that happened 40 years ago, and I have no idea what was in their minds or much less how they should have proceeded at that point.

Q. And you understand that the reason you don't test a substance such as benzpyrene in man is because if you suspect it's a carcinogen, it would be unethical to test that substance in man; correct?

A. Sure.

Q. And therefore you have to rely on the animal research.

A. I believe that was what Dr. Ernst Wynder was referring to in his statement.

Q. We've now seen evidence from the cigarette manufacturers' own files that they had isolated --

Let's go back to that document for a second. In addition to benzpyrene, RJR had also isolated other polycyclic hydrocarbons thought to be carcinogens; correct?

A. Apparently so.

Q. He goes on to say, after talking about benzpyrene, "Some thirty-odd polycyclic hydrocarbons have since been similarly characterized in these

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laboratories;" correct?

A. I --

Yes, I see that.

Q. It says, "Of these, eight are carcinogenic to mouse epidermis;" correct?

A. Correct.

Q. "Cholanthrene, a potent carcinogen, is one of three not yet reported by other investigators;" correct?

A. Correct. This was in --

Q. 1959.

A. -- November 1959.

Q. Right. So we now have evidence of numerous polycyclic hydrocarbons known for carcinogenic --

A. I'd like to interject one thing. At that time we knew that methyl cholanthrene was a carcinogen. In fact in that year I was using methyl cholanthrene to induce testicular tumors in experimental animals. So --

Q. The problem is that no one's reported that that particular substance is in cigarette smoke; correct?

A. I -- I guess that's what he means.

Q. And the whole problem is that a company that has sworn some five years earlier that its primary responsibility is the health of individuals should

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certainly be telling the public when it identifies a known carcinogen;; correct, in cigarette smoke?

MR. MERRITT: Object to the form of the question.

A. You're asking me to make a judgment about behavior of people 40 years ago, and I can't do that. I was not there. I don't -- I can't interpret their thought process.

Q. So we've now seen a document from RJR's files where they identify eight carcinogenic substances in tobacco smoke, including benzpyrene, and a document from British-American Tobacco, the parent company of B&W, that states that the majority of people in the tobacco industry accept the cause-and-effect relationship between cigarette smoking and lung cancer. You would agree at this point in time it would be unconscionable for the Tobacco Industry Research Committee to come out and continue to dispute adamantly that any connection had been shown between cigarette smoking and lung cancer; correct?

MR. MERRITT: I'm going to object to that as lacking in foundation, calling for a conclusion. I object to your characterization of these documents.

A. I think what you're pointing out here is very pertinent, and that is that the Tobacco Industry

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Research Committee and The Council for Tobacco Research have never been under direct control of the tobacco industry. And I accept, too, that Dr. Hockett was an honorable man and a good scientist, and anything he said would have been what he believed to be true at that particular point in time.

Q. Whatever he said would have been in the interests of the tobacco industry; correct?

A. No, sir. Dr. Hockett was a very honorable scientist of distinction, and whatever he said I accept would be what he believed at that point in time.

Q. So you think if R. J. Reynolds had disclosed to him that they'd isolated benzpyrene, he would have said so?

A. I think so.

Q. Apparently he was one of the people that BATCO talked to. Don't you think, as an honorable scientist, when he told B.A.T. in 1958 or apparently indicated to them that he believed that cigarette smoking had been established as a cause of lung cancer, that he should have come out publicly and said so?

MR. MERRITT: I'm going to object to that. If that's an attempt to characterize this document,

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it's grossly inaccurate.
A. I can't respond to that because I don't know the sequence of events, what he knew, when. I accept his statement that is written as correct as what he believed.
Q. As of 1959, based on the documents you have seen, it would be inconsistent for the Tobacco Industry Research Council, who -- Committee, who's basically told B.A.T. researchers that they agree that there's a causal connection established, to come out and start stating that, hey, the scientific evidence is actually even more overwhelming against the theory that tobacco smoking causes lung cancer.
MR. MERRITT: Object to the question.
Q. Can you answer that, or do you want me to restate it?
A. You'll have to restate it because there were about three things in there, and I got lost along the way.
Q. As of 1959, based on the documents that you've seen, you would agree that it would be unconscionable for the TIRC to come out and state that the evidence even more strongly conflicts with or fails to support the theory that tobacco smoking causes lung cancer.
A. I don't think anything is unconscionable about

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Dr. Hockett making a statement to the press. It was the charge to the Tobacco Industry Research Committee to provide public information, and he was telling people what he believed at that point in time.

Q. Presumably, though, he should make sure that the information he gives or the statements he makes are truthful.

A. I'm certain that they were.

Q. And you would agree that he shouldn't be telling one group of people one thing and another group of people another thing about causation; correct?

A. He was not --

I have not seen any statement he made about causation. And again we come back to definitions. If you want to talk about the link between smoking and -- and health, fine, everybody accepts that; if you want to use that as cause scientifically speaking, that's not causation.

(Plaintiffs' Exhibit 1155 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1155 is a document Bates stamp numbered CTR MN 11311722 through 725. This is again a Hill & Knowlton press release; correct?

A. Correct.

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Q. It's released on behalf of the Tobacco Industry Research Committee; correct?
A. Correct.
Q. It's released on November 27th, 1959; --
A. Correct.
Q. -- correct?
It says "CANCER SCIENTIST'S COMMENT ON SMOKING-LUNG CANCER REVIEW;" correct?
A. Yes.
Q. It says, "Dr. C. C. Little, scientific director of the Tobacco Industry Research Committee, today issued a comment on the statement of the Public Health Service on, quote, Smoking and Lung Cancer;'" correct?
A. Correct.
Q. It says, "Dr. Little's comment follows."
Quote, "Today, more than ever before, scientific evidence is accumulating that conflicts with or fails to support the tobacco-smoking theories of lung cancer;" correct?
A. That probably is correct in 1959.
Q. Well it's not correct based on the information we've already seen; correct?
A. No, that's your interpretation.
Q. Okay. Assuming that the B.A.T. document is

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correct when it states that there was a general agreement that smoking caused cancer in the tobacco industry, Dr. Little's comment is false; correct?

MR. MERRITT: I'm going to object to that, assuming a fact not in evidence and mischaracterizing a document.

A. Again we come back to causation. I don't think that anyone at this point in time or even today would say that smoking tobacco causes cancer. There are many other events that account for cell regulation, why a cell goes wrong, that must be introduced into the equation.

Q. Let me just understand that. It's your testimony that you don't think that anyone at this point in time, or even today, would say that smoking tobacco causes cancer? That's what you just said; right?

A. Can we --

Yes, in the scientific sense. And I've been over this repeatedly, Mr. O'Fallon; I don't know how I can be any clearer than I've been. If you want to talk about risk factors and relationships between smoking, lung cancer, a variety of other diseases, most certainly all of us can accept that, but I have never seen a death certificate that says "Cause of

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Death: Smoking." Smoking may potentiate cells to go wrong in their regulation, in their regulatory cycle, and it may be a risk factor as we all know from statistical evidence, but to say that per se it is the scientific cause is -- is erroneous. It is not scientifically correct.

Q. Well doesn't --

A. It is not like the tubercle bacillus causing tuberculosis.

Q. Let's just back up a second. I'm going to take a very recent example.

Princess Dianna died a couple days ago. As I understand it, she died of a coronary arrest; correct?

A. That's what the newspapers say.

Q. Is there any doubt in your mind that the reason she died is because she was in a high-speed auto crash?

A. No. I don't even think that's relevant.

Q. The fact of the matter is that nowhere in Exhibit 1155 does Dr. Little state that he believes smoking is a risk factor for lung cancer; correct?

A. I wouldn't have expected that he would.

Q. And he didn't; correct?

A. Dr. Little was a geneticist. He was absolutely

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convinced that there were genetic bases of virtually all disease.

Q. And he's speaking on behalf of the Tobacco Industry Research Committee, which speaks on behalf of the tobacco industry; correct?

A. Correct.

Q. I'd like to show you a document that's been previously marked as Plaintiffs' Deposition Exhibit 1050. This is a document Bates stamp numbered 504822847 through 2852.

Have you seen this document previously?

A. No, sir. And it's not particularly legible either.

Q. This is entitled "THE SMOKING AND HEALTH PROBLEM -- A CRITICAL AND OBJECTIVE APPRAISAL;" correct?

A. That is the title.

Q. It's dated 1962; correct?

A. Dated 1962.

Q. The author is Alan Rodgman?

A. I suppose so.

Q. I'll represent that it is. And it appears that he's in the Chemical Research Division; correct?

A. Yes, I believe so.

Q. I will further represent that this is a document

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produced by R. J. Reynolds Tobacco Corporation in the ongoing litigation. Okay?
A. All right.
Q. What Dr. Rodgman does is he goes through and analyzes the evidence concerning the, as he calls it, the cigarette smoke/lung cancer problem; correct?
MR. MERRITT: Well I'm going to object to that.
Q. Let's turn to page two of the document. Roman numeral I, do see where it says "The Evidence - Pro and Con?"
A. Correct.
Q. It says, "The cigarette smoke-lung cancer problem has been investigated epidemiologically, pathologically, biologically, and chemically. Each discipline has yielded pertinent information." Correct?
A. Yes.
Q. He then looks at it. He goes through and analyzes the epidemiological data, the pathological data, the biological data, and the chemical data; correct?
MR. MERRITT: If you want him to -- to make sort of global statements about this document, you should let him read it.

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MR. O'FALLON: Well I'm going to get to -- I don't need him to make global statements about it. I'm going to get to the statement I want him to refer to. I just want him to look and see that.

MR. MERRITT: Well I mean if you're asking if there are headings there, that's one thing. If you're asking whether that's the methodology or the organization of the thing, I think he has to look at the whole -- at the whole document.

Q. Well would you agree that it appears that what Dr. Rodgman has done is examine the epidemiological, pathological, biological, and chemical data?

A. I doubt if he examined the data. I suspect that he did a library search.

Q. Well you understand that he's also a bench scientist; correct?

A. I don't understand because I don't know Dr. Rodgman. I accept what you're telling me.

Q. All right. We saw the 1959 memo --

A. Yes.

Q. -- and talking about the research done at R. J. Reynolds.

A. Yes.

Q. So it's not going to be just outside research they're looking at here.

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A. Well I -- I am absolutely certain that Dr. Rodgman did not oversee 34 different statistical studies. I am absolutely certain.

Q. Right. I will concede that some of the -- some of the data is external data.

A. I will concede that most of it is. I would be highly suspicious that the vast majority of it is external data.

Q. Okay. Well we've talked about what they've already identified in identifying compounds in cigarette smoke; correct?

A. Correct.

Q. Let's see what he concludes at paragraph small letter e. on page four of this document, Bates number 2850. Do you see that?

A. I do.

Q. He states, quote, "Obviously, the amount of evidence accumulated to indict cigarette smoking as a health hazard is overwhelming. The evidence challenging this indictment is scant. Attempts to shift the blame to other factors, e.g., air pollutants, necessitates acceptance of data similar to those denied in the cigarette smoke case." Correct?

A. Correct.

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Q. Do you know whether R. J. Reynolds at this point in time publicly stated that the amount of evidence accumulated to indict cigarette smoking as a health hazard is overwhelming?
A. I have no idea.
Q. Do you know whether they stated that the evidence challenging this indictment is scant?
A. I have no idea.
Q. Don't you agree that they had a duty to make sure that their representatives, such as people working at TIRC, either conveyed this information to the public or made sure that they didn't state -- make statements that were fundamentally opposed to what they themselves believed?
MR. MERRITT: Object to the question.
A. I don't know what they themselves believed, and furthermore, I don't know what the corporate duty is, so I really am incompetent to make any comment about that.
Q. The Council for Tobacco Research is a corporation; isn't it?
A. Yes.
Q. You're the CEO of that corporation; correct?
A. Yes.
Q. It's certainly not your testimony that you don't

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know the meaning of what a corporate duty is in the context of a corporate entity like CTR; correct?

A. I know what my corporate duty is, but I can't speak for R. J. Reynolds Tobacco Company or any other corporate enterprise.

Q. Well how about TIRC. Do you think TIRC had a duty to make sure that its statements were true before they made them?

A. I don't think that the issue of duty is -- is germane. I am certain that the statements made by Dr. Hockett and Dr. Little were things that they believed at the time.

(Plaintiffs' Exhibit 1156 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1156 is a document Bates stamp numbered CTR MN 11312128 through 11312130. This is again another press release by Hill & Knowlton; correct?

A. Correct.

Q. This is made on behalf of the Tobacco Industry Research Committee; correct?

A. Yes.

Q. Its release date is Friday, April 19th of 1963; correct?

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A. Yes.
Q. And again this is a statement put out by Dr. Little; right?
A. Correct.
Q. Dr. Little states in 1963, which is now after the report that Dr. Rodgman wrote, that, quote, "There does not exist the essential experimental and clinical knowledge with which science can even define or identify the multiple factors or influences that may contribute to the origin and progress of these diseases." Right?
A. Yes.
Q. And again he's talking about diseases associated with cigarette smoking; correct?
A. That's the assumption.
Q. That would be a reasonable assumption; right?
A. Yes.
Q. That's really the opposite of what Dr. Rodgman said when he said that the amount of evidence accumulated to indict cigarette smoking as a health hazard is overwhelming; correct?
A. That's Dr. Rodgman's interpretation of the literature he's reviewed, and I have no -- I have no basis for making a judgment about Dr. Rodgman's opinion any more than I have a basis for making a

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judgment about Dr. Little's opinion in 1963.

Q. But the one consistent theme is that they are both being paid by the tobacco industry; correct?

A. I suppose so. I -- I don't understand that that's going to make any difference in a difference of opinion.

Q. Don't you think if R. J. Reynolds, who undertook this duty to put the health of the smoker first, had come out and said in 1963 or 1962 that obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming, that if they had said that, the issue would be by and large dead in this country about whether or not a controversy still existed?

MR. MERRITT: Object to the question.

A. Oh, I think that's argumentative. I think you're -- you're trying to get me to say something that I don't believe.

Q. The fact of the matter is that if the cigarette companies came out and said that they now accepted that cigarette smoking causes cancer, we wouldn't have a debate about whether cigarette smoking is a health hazard; correct?

MR. MERRITT: Objection, calls for speculation.

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A. I have said repeatedly that we know that tobacco and cigarette smoking constituted risk factors to health and a number of disease processes.

I would call your attention to the document that you provided to me where Dr. Little said, quote, "Scientific work continued to support the view that the quest for a single, simple, 'magic bullet' to explain the causes or provide the cure for cancer and of heart disease is unrealistic and probably futile."

Q. Where --

A. And you are pursuing that very futile line of reasoning in trying to ascribe lung cancer or any other disease to one single factor. And the scientific community simply does not believe this. And besides, we continue to go over this ancient history; this is 30, 40 years old. This is not -- this is not applicable to anything we do or say today.

Q. Where in this document does it say cigarette smoking is a risk factor for any disease?

A. It doesn't use that terminology. I use that terminology.

Q. This document doesn't say it in 1962; does it?

A. It makes no difference to me. It is something that we have come to accept.

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Q. The fact of the matter is --

Well when did we come to accept that? When did the TIRC first come out and say that cigarette smoking is a risk factor for lung cancer and other diseases?

A. Since the cessation of the public relations function of TIRC and the incorporation of CTR, we have not served as a public information clearinghouse. On the contrary, we have encouraged those investigators whom we've supported to publish the data that they derive from their experimentation, and they have done so. And I've explained to you earlier today, many of these reports are contrary to the interests of the tobacco industry, and the tobacco industry has never at any point criticized CTR for publication of data not in their best business interest.

Q. Move to strike as non-responsive.

When did TIRC first come out and say that cigarette smoking is a risk factor for lung cancer or other diseases?

A. I said risk factor. That is --

There's no requirement that CTR or TIRC say risk factor.

Q. Move to strike as non-responsive.

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A. That's very responsive.
Q. When is the first time --
A. Mr. O'Fallon, that's totally responsive, and that's the only response I'm going to give you because I -- it's the truth.
Q. Move to strike as non --
A. Risk factor is my terminology, not the CTR or TIRC.
Q. Move to strike as non-responsive. Has T --
Has TIRC or CTR ever stated publicly that cigarette smoking is a risk factor -- no, strike that.
Prior to 1994, when you testified before the Congress, had CTR ever stated publicly that smoking is a risk factor for disease?
A. I can't tell you ancient history. What you've been showing me here today is all out of the distant past, and people do get a little smarter as we go along.
Q. Sir, my lawsuit starts in 1954 and goes through to 1994. So prior to your statement before Congress in 1994, had any representative of the TIRC or the CTR ever publicly stated that smoking was a risk factor for any disease?
A. I don't know.

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Q. To the best of your knowledge, they have not; correct?
A. I don't know.
Q. And I have shown you numerous statements now made by TIRC in the past; correct?
A. You've shown me ancient history.
Q. And not one of them has said that cigarette smoking is a risk factor for lung disease or any other disease, correct?
A. None that you've shown me today.
Q. And as you sit here today, you can't identify any such statements; correct?
Correct?
A. I don't think I ought to even dignify that sort of a question with a -- with a response. It's unpleasant and uncalled for. I told you what I know. I told you that "risk factor" is my terminology. There is no obligation for people working for TIRC 40 years ago to use the same terminology I'm using with you here today.
Q. Then let's use the terminology that they use.
Have you got the Frank Statement there in front of you?
A. Yes.
Q. Cigarette industry in 1954 stated, "We believe

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that products we make are not injurious to health." Have they ever reneged that statement?

A. I can't -- I can't tell you that. I believe that executives of the tobacco industry have indicated an understanding that their -- that smoking is a risk factor in health.

Q. But again, risk factor, you have testified now at least 15 times, is your language. What I'm concentrating on is their language.

They took out an ad in 1954 stating that cigarettes are not injurious to health. Have they ever retracted that language?

A. I don't know.

MR. O'FALLON: Why don't we take a break.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. O'FALLON:

Q. What year did Dr. Little join TIRC?

A. I believe in 1954, shortly after it was organized, but I'm not sure of that.

Q. Did he continue to do research on tobacco and health?

A. I can't tell you that. He wore many hats, so I expect he was continuing to be active at least as a consultant at the Jackson Laboratory.

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(Discussion off the stenographic record.)
Q. But again, the whole notion of the TIRC and later The Council for Tobacco Research was that that research would be independent, so presumably Dr. Little wouldn't be doing smoking-and-health research while he was employed by the TIRC/CTR; correct?
A. I think so.
(Plaintiffs' Exhibit 1157 was marked for identification.)
BY MR. O'FALLON:
Q. Plaintiffs' Exhibit 1157 is a document Bates stamp numbered CTR PUBLIC STATEMENT 001239 through 1234.
Have you seen this document previously?
A. No, sir.
Q. This is a press release that was apparently issued on February 3rd of 1969; correct?
A. That's the date.
Q. The TIRC is now called The Council for Tobacco Research; correct?
A. Yes.
Q. The first paragraph states, "The scientist who has been associated with more research in tobacco health than any other person declared today that, quote, there is no demonstrated causal relationship

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between smoking and any disease, end quote;" correct?
A. Correct.
Q. Now Dr. Little was not doing research between 1954 and 1969, at least to the best of your estimation; correct?
A. Well when you say "not doing research," I would imagine that his many duties with the American Cancer Society or its predecessor, with the Council for Tobacco Research, and presumably with the Bar Harbor Laboratory would have precluded him doing any active wet research at the bench, but I'm certain that a scientist of his capability and intellect and interest would have participated in some consultative capacity in work being done through those years.
Q. He then goes on to state, quote, "The gaps in knowledge are so great that those who dogmatically assert otherwise - whether they state that there is or is not such a causal relationship - are premature in judgment. If anything, the pure biological evidence is pointing away from, not toward, the causal hypothesis;" correct?
A. That is what he said.
Q. That statement does not support the notion that cigarette smoking is a risk factor for disease; correct?

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A. That's correct. I pointed out previously Dr. Little was a geneticist, was convinced as a genetic scientist that the genetic makeup of an individual largely determines his suceptibility to cancer, cardiovascular disease, or chronic respiratory disease, which is stated further on.

Q. Thus for 15 years, from 1954 to 1969, the representatives of the TIRC and The Council for Tobacco Research have steadfastly claimed that the causal connection between smoking and disease has not been proven; correct?

A. That is what is said.

Q. And smokers would certainly be entitled to rely upon those opinions; correct?

MR. MERRITT: Well you're -- again you're asking him -- I'm going to --

I'll object to the form of the question.

A. Dr. Little is a scientist of distinguished reputation. I imagine that at least some people in the public would rely on his -- his opinion. But he is simply expressing his scientific opinion.

Q. He's expressing that opinion, however, on behalf of an institute that's been established by the tobacco industry and has told the public that they would be independent; correct?

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A. Correct.
Q. You would agree that people are entitled to rely upon statements -- strike that.
You would agree it would be reasonable for people to rely on the statements that I've shown you made by TIRC and the CTR in concluding that cigarette smoking did not cause disease, and, in so concluding, continuing to smoke cigarettes; correct?
MR. MERRITT: Objection, it calls for a conclusion and is lacking in foundation.
A. Not having had a chance to read this document, I can't speak to whether he comments on whether people should keep smoking or not.
Q. Well there's nowhere in here where he indicates that cigarette smoking is implicated in disease; correct?
A. I can't --
MR. MERRITT: Well if you're going to ask him about what's in the document, he should have an opportunity to look at it.
A. I can't answer that.
Q. There's nowhere in this document where Dr. Little states that cigarette smoking is a risk factor for disease; correct?
A. I -- I can't answer that.

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MR. MERRITT: Do you want to have him look --

MR. O'FALLON: He can certainly look at the document.

MR. MERRITT: Why don't you --

MR. O'FALLON: I'm not stopping him from looking at the document.

MR. MERRITT: Why don't you read the document.

MR. O'FALLON: And if you need to do that, certainly why don't you do so.

(Witness reads document.)

A. I think Dr. Little was prophetic. On page two he says, "The whole field of smoking and health requires a great deal more research and information before proper evaluation can be made," and I would --

Q. There's nothing --

A. -- second the motion.

Q. Move to strike that as non-responsive.

My question is: Does Dr. Little at any point in this document implicate smoking as a cause of any disease?

A. Do we have to define cause again?

Q. Can you answer my question?

A. I'll be glad --

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I'll be glad to go through the cause again.
Q. Can you answer my question?
A. No, not unless we define cause.
Q. There's nowhere in this document where he states that cigarette --
By the way, does he define cause anywhere in here, sir?
A. I thought that was a rhetorical question to yourself.
Q. No. Does he define cause anywhere in here?
A. He says there is no demonstrated causal relationship between smoking and any disease, and I would subscribe to that if we're using the term "cause" as a scientific term.
Q. But he doesn't define cause.
A. He doesn't define it, no.
Q. Okay.
A. But he's using it in a scientific sense.
Q. But he's using it in a document that he knows is going to be distributed to the press for broad readership by people who are not scientists; correct?
A. He says --
MR. MERRITT: Object, lack of foundation, calls for a conclusion.
A. I can't respond to that. He's using the term

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"cause" as a good scientist would use it.

Q. He doesn't define the word cause there; correct?

A. He doesn't define it.

Q. And he understands that he's going to be addressing this public press release to predominantly non-scientists; correct?

A. Well I think you're ascribing motives to him that I have no knowledge of.

Q. That would make some common sense, though; right, sir?

A. Not necessarily.

MR. MERRITT: Object, object to that question.

Q. When you put out a press release to the general public, you know that a great many people are going to read your statement who are non-scientists; correct?

MR. MERRITT: Objection. There's no evidence in the record that this went to the general public. You keep saying this over and over again. Are you representing that you've seen the -- the -- the list that these things were distributed to?

Have you asked him where they currently distribute press releases? And this is --

MR. O'FALLON: I will --

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MR. MERRITT: I think this is really an unfair line of questioning, and you keep doing it.

MR. O'FALLON: I will state that we are asking in discovery, as you well know, to get an order that will in fact tell us where all of these were distributed. I hope that we will be effective in getting that as that discovery has not yet been provided by you.

BY MR. O'FALLON:

Q. Doctor, do you know where this press release went in 1969?

A. I have no idea.

Q. Are there lists kept in the files of The Council for Tobacco Research that would tell me where this press release went in 1969?

A. I don't know.

MR. O'FALLON: And I have asked counsel on numerous occasions, sir, for that information. If you or one of your colleagues was on a conference call with me in a meet and confer last month, you will know that I have asked and I have sent letters asking for specific information about where press releases and other statements were released. So we have asked for that information. We have attempted to get it. If you would like me to call back Dr.

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Glenn when we obtain that information, I'll be more than happy to do so, to lay foundation, or you and I can come to some agreement about that.

MR. MERRITT: Well --

MR. O'FALLON: But it will in time, I have to assume -- and I believe it's a reasonable assumption -- that when a press release is produced and it indicates it was distributed, that it indicates it was for release, that in fact it went out. Now if you have evidence that indicates that I am point blank wrong on that, then please come forward with it.

MR. MERRITT: No, I'm not quarreling with your statement --

MR. O'FALLON: Okay.

MR. MERRITT: -- that it went out, I'm just quarreling with your statement repeatedly that it goes to the general public as opposed to scientists, doctors, science writers, people who would have a much more scientific orientation.

MR. O'FALLON: Well --

MR. MERRITT: That's my --

MR. O'FALLON: -- are you basing your objection on something you know for a fact?

MR. MERRITT: Well I think you can ask Dr.

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Glenn. They currently --

Every year we put out press releases --

MR. O'FALLON: Currently doesn't help me in 1969.

You're the attorney for these folks. I mean do you have a basis for your -- for your objection? If so, let me know. And do you have evidence in the file that you know about that indicates that this only went to the science press? Because that's the kind of information, sir, that we've been asking for for. It's now almost three months.

MR. MERRITT: I don't think --

Let me talk to you at the break. I don't think that -- that -- that I believe that the --

I mean we don't have an absolute, complete record; we couldn't tell you where this one went. But we have mailing lists from a number of years back which do show where -- where these things were typically going. And I don't think we're withholding those things; I think those things are in the depository.

MR. O'FALLON: Well --

MR. MERRITT: I'll be glad to call and try to find out.

MR. O'FALLON: -- let me know where I can

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find them. In any event, would you agree --

Well, I don't even know where we're at. What was my last question.

THE REPORTER: Hit Q.

BY MR. O'FALLON:

Q. Doctor, assuming that this press release was given wide distribution; that is, that it went to services other than purely scientific services, you would agree that the doctor who made this statement would understand that it was going to be read by non-scientists; correct?

A. I don't know that.

Q. Okay. I think you have made a distinction here today between a scientific definition of cause and what you've called a lay definition of cause. You would understand that it's reasonable for the lay public to use their definition of cause when reading statements; correct?

A. I don't know.

MR. MERRITT: Object to the form of the question.

Q. And similarly you would agree that when somebody makes a public statement that they know will be reaching the lay public, it would be reasonable for that person making that statement to expect that the

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lay public will use their definition of cause; that is, the lay public's definition of cause; correct?

A. I don't know that.

Q. The only way to prevent that is to actually define the word "cause" in your statement so that you make sure that it's not misconstrued; correct?

A. I don't see how you could misconstrue a statement made by a scientist regarding what he -- his current belief is in 1969.

Q. I'd like to next show you Plaintiffs' Exhibit 512. Are you familiar with Dr. Green?

A. Doctor --

Q. Green. Green.

A. Harry Greene?

Q. I'm not sure if it's Harry Greene or not. He's a scientist with the -- with British-American Tobacco, Dr. S. J. Green.

A. No.

Q. Are you familiar with a program called Panorama?

A. Yes.

Q. Are you familiar with statements made on Panorama by a tobacco industry representative where he basically conceded causation?

A. This is dated 1980?

Q. Yes.

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A. I am not familiar with this.
Q. Okay. Let's look on page --
By the way, this document is Bates stamp numbered 301140234 through 255. And I'd ask you to look on page 237, or last three Bates numbered 237, page three of this document.
Are you there?
A. I'm there.
Q. The first is a statement by a gentleman named Long. Have you ever heard of Mr. Long?
A. No.
Q. It appears that he's a representative of Souza Cruz, which is one of B.A.T Industries' other sister companies similar to Brown & Williamson.
He states, quote, "The medical evidence, as far as I am aware, is of a statistical nature and it is, as you know, the industry's view that no evidence has been produced to establish the causal relationship between smoking and any of the diseases with which it has been associated." Correct?
A. Correct.
Q. That would also fairly state the American industry's view at that point in time in 1980; correct?
MR. MERRITT: Well I'm -- I'm going to

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object to that as lacking in foundation.

A. Well you are asking me for -- for a conclusion that I can't reach because I wasn't there and I wasn't -- I wasn't a participant.

Q. Based on your knowledge of the CTR and your knowledge of the industry and their statements on causation, would that be consistent with what you understood the American tobacco industry's position to be in 1980?

A. I expect so.

Q. There's then a quote from Dr. Green. He's a research chemist with British-American Tobacco, or was. He had left British-American Tobacco at the time he made this statement. He states, quote, "I think this is a very naive view and quite simply I believe that just to say evidence is statistical and can't prove anything is non -- is a nonsense. I think that nearly all evidence these days is statistical. I believe that experiments can be carried out and have been carried out and I think that in a nutshell that we can show -- that what we can show is that smoking is a very serious causal factor as far as the smoking population is concerned."

Do you agree with that statement?

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A. Well I don't know. He's making a lot of conclusions there; that's more than one statement.

Where he says he believes that nearly all evidence is statistical, I would have to -- I would -- I would certainly have to take issue with that.

Q. Okay.

A. That's not true. Simply not true.

Q. How about his statement --

And again, he's a former tobacco research chemist. How about a statement that says, quote, "I believe that experiments can be carried out and have been carried out and I think that in a nutshell what we can show is that smoking is a very serious causal factor as far as the smoking population is concerned," do you agree with that statement?

A. I'd have to see the documentation. I don't know of any -- any papers that he can cite that would support that statement.

In 1980, were there experiments to be carried out which would prove one way or the other? None had been reported. Many animals had been exposed to cigarette smoke in massive quantities and never any reports of any serious diseases.

Q. Doctor, you have not seen all of the research

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carried out by British-American Tobacco and -- and B.A.T Industries in England; correct?

A. No, I have not.

Q. You have not seen all of the research that has been carried out by R. J. Reynolds; correct?

A. Correct.

Q. You have not seen the internal research that's been carried out by Philip Morris; correct?

A. No, I have not.

Q. You have not seen the internal research that's been carried out by Philip Morris through their affiliate in Switzerland named INFOTAB; correct?

A. Correct. And that is my point, I don't -- I don't know of any evidence, I don't know of any papers, I don't know what the citations are that would be supportive of this -- of this view.

Q. And you would agree that the tobacco industry, if it had evidence such that Dr. Green is talking about here, had that evidence internally, it had a duty and a responsibility to the public to publish that research and to make it known; correct?

A. I don't --

No, I do not subscribe to that statement because you haven't defined what the evidence is. Until I know that, I would like to --

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Q. Well that's kind of --
A. -- defer on answering.
Q. Well that's kind of the catch 22, though; right?
A. Your question is?
Q. Well the responsibility --
A. You're asking me to make an assumption that I can't make.
Q. Well you're saying that they don't have a duty to disclose the evidence until you can see what the evidence is. Right?
A. No, I didn't say that. I said I don't have the ability to make a judgment or an evaluation of the evidence until I have seen it.
Q. Did you ask the cigarette manufacturers to see their internal research prior to going before Congress and testifying in 1994?
A. No, I did not.
Q. Did the American industry adopt Dr. Green's statements?
A. I would doubt it.
Q. And you understand that even today the American industry claims that cigarette smoking does not cause cancer.
A. I don't think that they are as naive as to make a statement as bald as that. I think thinking

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executives of the industry would tell you essentially what I told you here today, that if you use the word "causation" in the lay sense, there is certainly a link between smoking and certain diseases, and we've known that for a hundred years. The evidence has increased as time goes on, and The Council for Tobacco Research has contributed a great deal to the development of that body of knowledge.

Q. But the statements we've looked at here today from the TIRC have stated the exact opposite of what you're now stating. They've stated that the evidence has decreased that -- which proved that link.

A. That was ancient history.

Q. Well ancient history includes going back to 1969; correct?

A. I was not present in 1954, 1969, 1980.

Q. But you understand that you are here today as a representative of the CTR and the TIRC; correct?

A. I do. And my tenure extends back 10 years.

Q. Right.

A. And I'm happy to comment on any of the activities of CTR, particularly those within my experience.

Q. Let's also look at page 239. And actually let's start on page -- last three Bates numbered 238.

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Are you familiar with a group known as ICOSI?
A. No.
Q. Let's see what it says. "P.T,", and I think that's probably the moderator, says, "The reason for the industry's position lies in America. Here it has faced a string of law suits brought by consumers who say that cigarettes have damaged their health. They're claiming huge sums of money in comparison. Claims" --
A. "Compensation."
Q. Oh, I'm sorry. "They're claiming huge sums of money in compensation. Claims currently run to over 40 million dollars. So far the industry hasn't lost a case. If it were to lose a case it could face an avalanche of literally hundreds of -- thousands of similar claims. The result? The industry might face economic ruin. No wonder the industry closes ranks whenever its interests are threatened. The companies operating in the United States finance a powerful lobby organisation, the Tobacco Institute. The companies in Britain are represented by the Tobacco Advisory Council, the TAC. In Germany the multinationals have combined with domestic and European manufacturers to form the Verband Der Cigaretten Industry, and to keep a watching brief on

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bodies like the Common Market Commission and the World Health Organisation, the industry has now set up an office in Brussels, ICOSI, the International Committee on Smoking Issues. The companies finance the office in Brussels, its staff seldom talk to the press. ICOSI keeps a low profile: smoking and health is its business. Last year it issued -- issued a series of background briefing papers. Their purpose, to make sure the companies are consistent in their answers on smoking and health. This was their basic position."

Quote, "Scientific research does not support the conclusion that tobacco smoke or the constituents found in tobacco smoke have been proven to cause disease in humans."

Doctor, that's the same stance of the industry today; correct?

MR. MERRITT: I'm -- I'm going to object. Are you referring to this --

MR. O'FALLON: I'm referring to the last quote. I was putting it in context with the previous reading.

MR. MERRITT: Okay. I want to object to the form of the question.

You may answer.

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A. I don't know what the industry would say today, whether they would subscribe to that identical statement or not. Seems to me that the recent testimony of industry executives has been very relaxed to the extent they recognize the risk relationship between smoking and health problems.

Q. Which testimony are you referring to?

A. Referring to recent testimony by the chief executive officer of R. J. Reynolds and the chief executive officer of Philip Morris.

Q. The chief executive officer of R. J. Reynolds Nabisco; correct?

A. Yes.

Q. You understand Mr. Goldstone is not the chief executive officer of RJR Tobacco; correct?

A. No, but he's the chief executive of the parent company.

Q. Yeah. Do you understand that R. J. Reynolds' chief scientists have made statements such as they do not consider smoking to be an unsafe activity?

A. I am not aware of that.

Q. All right. Because that would be fundamentally at odds with what Mr. Goldstone was saying; correct?

A. I can't comment on that because I have no knowledge of what they've said.

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Q. Do you know that RJR representatives have recently testified that all cigarettes are safe?

A. I -- I do not know that. It's not a part of my experience.

Q. Right. And again, that would be inconsistent with what you've recently seen; correct?

A. I can't comment on that because there -- you're --

You're telling me things that -- that are hearsay as far as I'm concerned.

Q. Well I'm just trying to follow up on the statement you made about recent executive statements. The fact of the matter is that the first time you've seen an executive make a statement similar to Mr. Goldstone is in the past couple of weeks; correct?

A. Correct.

Q. They've never made statements similar to that prior to this time, to the best of your knowledge; correct?

A. I don't know.

Q. To the best of your knowledge.

A. I don't know.

Q. You don't know of any such statements; correct?

A. I do not know.

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Q. Okay. Mr. --

Dr. Green then goes on to comment about ICOSI and he says, "I must say, the scientists in the industry, and that's worldwide I think, refer to that particular organisation as the Flat Earth Society;" correct?

A. That's what it says.

Q. And they --

And then he asks "Why?" And he says, "For obvious reasons. I don't think it's a scientifically scientifically based organisation." Correct?

A. That is what is recorded.

Q. Doctor, in 1994 you testified before Congress; correct?

A. Yes.

Q. You testified on behalf of The Council for Tobacco Research; correct?

A. Yes.

(Plaintiffs' Exhibit 1158 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1158 is an excerpt from the congressional record of the testimony of James F. Glenn, Chairman, Council for Tobacco Research, USA. Do you recognize this as your testimony?

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A. Yes, sir.
Q. I apologize if we didn't get all the tops of the pages copied on all the documents, but I'd ask that you look at page 375 of your testimony. You can find it because you can go to 373, and then the next page is 375.
A. Okay.
Q. It's the next one in the copy.
Are you there?
A. Yes.
Q. At this time you were asked point blank by Mr. Wyden whether you believed that smoking causes cancer; correct? See at the bottom of the page?
A. Yes.
Q. And you stated "No, sir;" right?
A. Yes. But you're taking that out of context because we had had the causation discussion at length in the middle of that page.
Q. And then he just asks you simply, "Do you believe that smoking causes cancer?" Correct?
A. And the answer is scientifically, no.
Q. You just state --
A. No, I had already stated my position very clearly.
Q. You state --

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A. I stated that causation was a scientific term and that we could not incriminate smoking per se. We have never --

I have never seen any evidence that smoking causes lung cancer. I've seen lots of statistical evidence that relates smoking -- that incriminates it as a risk factor, nobody argues with that, but he was asking me a question that I had already answered.

Q. And then he follows up and he asks you, quote, "Do you believe that smoking causes cancer?

"Mr. Glenn: No, sir."

A. Yeah. It's Dr. Glenn, as a matter of fact.

Q. I'm just -- I'm --

A. Just point of -- point of honor.

Q. And I'm not trying to be insulting. I'm quoting from the document.

A. You are insulting.

Q. Well I don't mean any disrespect, sir. I'm quoting from the document. The document says "Mr. Glenn," and I'm not --

A. And I already answered that previously; I specifically talked about the issue of cause, causation, scientific sense, lay sense, so it's perfectly clear what I'm saying.

No, I don't think smoking per se has been shown

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to be a causative factor for any disease, and it -- I don't know how I can be any more clear than this.

Q. And again, what you state is, when you're asked point blank by Mr. Wyden, "Do you believe that smoking causes cancer?" you say, "No, sir."

He also asked, "Do you believe smoking is addictive?" and you say, "No, sir;" correct?

A. I have no comment.

I could call your attention to the top of page 376, which supports what I've just stated to you.

Q. Move to strike that as non-responsive.

A. It's responsive.

MR. O'FALLON: Let's go off the record for a second.

THE REPORTER: Off the record, please.

(Discussion off the record.)

(Plaintiffs' Exhibit 1159 was marked for identification.)

BY MR. O'FALLON:

Q. I've had marked as Deposition Exhibit No. --

THE REPORTER: 1159.

Q. -- 1159 two pieces of paper. The first one is a Westlaw report on an article that appeared in the Star Tribune, and the second is an actual copy of that article from the Star Tribune cut out.

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I'll represent to you, sir, that the Star Tribune is the Minneapolis Star Tribune. It's a paper that's seen in -- in Minnesota. It's one of our larger papers. I'd like you to turn to the first page --

First of all, you understand that what this is reporting on is your testimony before Congress; correct?

A. I assume that.

Q. You understood before you went in to testify that there would be media coverage of your congressional testimony; correct?

A. Yes.

Q. You understood that any statements you made would -- would or may be widely reported; correct?

A. Yes.

Q. And you knew that before you went in; correct?

A. Yes.

Q. And you wouldn't be surprised if I told you that your statements were reported back in Minnesota; correct?

A. I wouldn't be surprised.

Q. Okay. The second-to-last paragraph of the first page of the document states as follows, quote, "He," and it's I believe referring to you, "insisted that

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smoking has not been proven a direct cause of cancer, only a risk factor, and he said CTR never tried to stop researchers from reporting work contrary to that view;" correct?

A. Correct.

Q. You would agree that citizens in the state of Minnesota are entitled to rely upon your statement that smoking has not been proven a direct cause of cancer; correct?

MR. MERRITT: I object, calls for a conclusion.

A. Well this again is taken out of context, and they did not publish my discussion of -- of causation, and the lay reader would have no basis for judgment about a statement of that sort, so I think this is an example of -- of bad reportage.

Q. But the fact of the matter is, wouldn't you agree, that smoking -- that in your opinion smoking has not been proven to be a direct cause of cancer, only a risk factor? Isn't that similar to what you've stated here today?

A. It's similar.

Q. And you would agree that the smokers in the state of Minnesota would be entitled to rely on your statement in making their own conclusion that

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cigarette smoking has not been proven to be a direct cause of cancer; correct?

MR. MERRITT: Object to the form.

A. Mr. O'Fallon, the lay public has been bombarded with information about the health risks of smoking. What I have said here was taken out of context, and I don't think that any reasonable person would possibly accept this as an endorsement of smoking as opposed to a risk factor for various health problems.

Q. But you're certainly casting doubt upon the causal link between --

A. No, I'm not.

Q. -- smoking and cancer; correct?

A. I'm not casting doubt upon anything.

Q. It would certainly be reasonable for someone who read that statement to conclude that you're casting doubt upon the causal relationship between smoking and lung cancer; correct?

A. No.

MR. MERRITT: Object to the question.

Q. Dr. Glenn, do you believe that one person has died as a result of smoking?

A. I don't know.

Q. Do you believe 10 people have died as a result of smoking?

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A. I don't know.
Q. Don't know whether anyone's ever died as a result of smoking; correct?
A. I don't know. I would have to see the death certificate and know some of the scientific facts.
Q. Based on the information you do know, do you think it's reasonable for you to conclude that at least one person has died of smoking?
A. I think it's reasonable to conclude that smoking may have been an inciting factor, maybe one of several, in a variety of diseases that can be lethal.
Q. Do you believe it's more likely than not that at least one person has died because of smoking?
A. Died because of smoking.
Q. Yes.
A. We're back to causation. I don't -- I don't know that there's ever been a death certificate issued that said "Cause of Death: Smoking."
Q. And until you see a death certificate that says "Cause of Death: Smoking," you will not agree that at least one person has died because of smoking.
A. No. Because there are disease processes. Smoking may contribute to a number of disease processes, and we've talked about that. And the reasonable view is that smoking is a risk factor for

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lung cancer, for emphysema, for vascular disease, for coronary artery disease.

Q. Do you believe it's more likely than not that smoking has caused cancer in at least one person?

A. Will you define cause for me?

Q. I'm going to define it in the sense you used it in front of the committee when you were asked do you believe that smoking causes cancer and you responded no, sir. So let's use that definition.

A. That's the scientific definition.

I know of no reports of anyone dying of smoking. People die of disease process, of abnormal physiology, of cell deregulation, of proliferative processes, of metastatic disease.

Q. I'm going to move to strike as non-responsive. I don't think you heard my question.

A. Yes, I heard your question.

Q. My question is: Do you believe it's more likely than not that smoking has caused cancer in at least one person?

A. Define cause for me.

Q. Sir, we've went through this once and I'm not going to go through it again.

A. Well I've been through it numerous times and I don't want to go through it again either, but you

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keep asking -- using the word "cause," and I've explained to you that if you're talking about cause of death, it is going to be coronary artery disease or myocardial infarction, it is going to be squamous-cell carcinoma of the lung, metastatic, it is going to be atherosclerotic disease, extensive. Those are causes of death.

Q. Okay. Again I'm --

A. Now smoking may have contributed to those pathophysiologic processes, and everybody knows that. This is not -- this is not unique knowledge to me.

Q. Move to strike as non-responsive.

I'm not asking about death here. Okay? So I'd ask that you listen to my question. Would you agree that it's more likely than not that smoking has caused cancer in at least one human being?

A. If you will define the word "cause" for me, I'll answer that question.

Q. You can't answer that question without going through the definition of cause; correct?

A. No, because people develop disease processes to which smoking may contribute, and that's -- this is a -- this is a known fact and it's been known for a hundred years.

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Q. Do you believe that smoking is -- has been a substantial contributing factor to lung disease in at least one person?

A. Well "substantial contributing factor" is a legal term.

Q. And you're familiar with the legal term; correct?

A. No, I'm not familiar with it.

Q. Well you've testified numerous times in numerous cases as a medical malpractice expert. I'm certain you do actually have an understanding of that term.

A. As a layman.

MR. MERRITT: Well I'm going to object to your assertion. You can ask questions, but you can't --

Q. You've testified as an expert and you have used that term in your expert testimony previously; haven't you, sir?

A. Have I used that term?

Q. Yes.

A. I don't know that I have.

Q. You've expressed causation opinions in malpractice cases; haven't you, sir?

A. Yes.

Q. You understand that causation in legal terms is

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defined as either more likely than not or a substantial contributing factor; correct?

A. Yes.

Q. Okay. Let's use that definition.

Using that definition, is smoking a substantial contributing factor to lung cancer in at least one human being?

A. I don't know.

Q. Is smoking a substantial contributing factor to heart disease in at least one human being?

A. I don't know.

Q. Is smoking a substantial contributing factor to arterial sclerosis in at least one human being?

A. I don't know.

Q. Is smoking a substantial contributing factor to strokes in at least one human being?

A. I don't know.

Q. Is smoking a substantial contributing factor to emphysema in at least one human being?

A. I don't know. And the reason I don't know the answers to your question is because "substantial contributing factor" is not a medical term, it's a legal term.

Q. And it's a legal term that you've used before; correct?

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A. Well I don't know that I've ever used the term.
Q. It's a legal term that's been used in -- in doing medical malpractice suits and in giving testimony about causation; correct?
A. I don't know that I have ever used such a term. Risk factor, contributing factor, all are acceptable, and smoking certainly is implicated.
Q. Will you admit or agree that smoking is a substantial contributing factor to chronic obstructive pulmonary disease in at least one human being?
A. Again, I don't know because I don't understand the legal implications of "substantial contributing factor" as opposed to "risk factor" or "contributing cause."
Q. Let's then use the definition of cause as more likely than not. Okay? Would you agree that it's more likely than not that smoking has caused lung cancer in at least one human being?
MR. MERRITT: I'm going to object to the form of that question.
A. No, I can't go along with that because you're -- you're trying to get me to change my definitions of cause.
Q. No. I'm asking you to use my definition of

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cause, sir.
A. I'm not -- I'm not going to do that.
Q. Okay. So you refuse to use my definition of cause.
A. I do because it's not scientific.
Q. You're only going to use your definition of cause.
A. No. I have explained repeatedly that I understand the lay definition of cause and I understand the simplistic approach to various diseases by saying smoking causes such and such a disease process, but on the scientific basis, this -- this simply is inaccurate.
Q. Okay. Well let's use the lay definition of cause.
Using the lay definition of cause, do you agree that smoking causes cancer?
A. The lay definition of cause can be accepted when talking about lung cancer, but it is certainly not a universal event.
Q. Do you agree that, using the lay definition of cause, that smoking causes cancer?
A. I don't know how we can say this in any different terms. I've said it so many times. I accept the Surgeon General's warning that smoking may

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cause cancer.

Q. Okay. I'm not asking "may." I'm asking you, using the lay definition --

You've refused to answer a question as to whether it's more likely than not that smoking causes cancer; correct?

A. Back to square one.

Q. Okay. Well let's just -- let's just make sure that -- that I understand your testimony. If I define --

A. Well you -- you understand it perfectly well. I know the risks of smoking --

Q. Sir --

A. -- and I am --

Q. Sir, don't --

A. -- I am not a member of the Flat Earth Society.

Q. I'm going to move to strike that as non-responsive. And sir, I'll ask you to not interrupt my question. Okay? It makes for a bad record, and I'd like to keep the record clear.

I've asked you questions where I've defined cause as more likely than not and you've refused to answer those questions; correct?

MR. MERRITT: Well that isn't --

A. No, that's not correct.

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MR. MERRITT: If that's a characterization, that isn't an accurate characterization of what he said.

MR. O'FALLON: Okay.

Q. Using the definition of cause as meaning more likely than not, will you admit that smoking causes cancer?

MR. MERRITT: I'm going to object to the form of that. Let -- let me just interrupt. "More likely than not" is not a definition of cancer, that's -- that's a definition of -- of -- of proof. I -- you know, we're now attaching words that have no connection whatsoever. It's just --

I object to the form of the question.

If you understand it, you can --

A. I would answer that smoking may be a contributing cause or risk factor in certain diseases.

Q. Okay. To what probability? Is it more likely than not that it causes certain diseases?

A. Well I think you can refer to the statistics we've talked about previously: More smokers get lung cancer than do non-smokers.

Q. Okay. So is it your testimony that it's more likely than not that cigarette smoking causes lung

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cancer?
A. I will not answer that question because I would have to redefine cause again.
Q. I'm asking you to use my definition, sir, in this next lines of questions, the previous ones of mine. So I'm going to ask it --
I'm defining cause as more likely than not. So again, do you agree that it's more likely than not that smoking causes cancer?
A. I will refuse to use your definition.
Q. Okay. Do you agree that it's more likely than not that smoking causes heart disease?
A. I would like to redefine cause.
Q. I'm asking you to use my definition.
A. I can't use your definition because it's inaccurate, scientifically inaccurate.
Q. Would you agree that it's more likely than not that smoking causes arterial sclerosis?
A. Your definition of cause?
Q. Okay. Would you admit that it's more likely than not that smoking causes strokes?
A. Stroke is caused by vascular abnormality, either hemorrhage or -- or thrombosis. Does smoking contribute to the vascular disease that predisposes to stroke? Yes, it's a risk factor.

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Q. Is it a substantial contributing factor?
A. I can't say that. That's a legal term. I can say it's a contributing cause.
Q. To what probability, sir?
A. Well if it's a question of probability, we know that it is a risk factor.
Q. But is it a cause?
A. No, not in the scientific sense.
Q. Okay. Is it more likely than not that smoking causes chronic obstructive pulmonary disease?
A. Not if we define cause in the scientific sense.
Q. Do you agree or disagree that smoking is the principal cause of chronic bronchitis and chronic obstructive lung disease?
A. I would point out that genetic predisposition to both of those conditions, particularly chronic obstructive disease, emphysema, there is now genetic proof of people who are highly susceptible. Those people certainly should not add the additional risk factor of smoking.
Q. You recall having your deposition taken in the Mississippi case; correct?
A. I recall it. I don't recall the specifics.
Q. Okay. Your deposition was taken on, I would think, March 18th of 1997; correct?

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A. That was one of them.
Q. Okay. You were asked, quote -- on page 92 -- quote, "Do you agree or disagree with Dr. Rubin that smoking is the principal cause of chronic bronchitis and chronic obstructive lung disease?" And your answer is, "I would agree with that." Do you recall that testimony?
A. Yes.
Q. And is that still your testimony today, that --
A. Dr. Rubin was speaking in -- in lay terms, and that is not scientifically accurate or pathologically accurate. He'd be the first to tell you that.
Q. Nonetheless, when you were asked, "Do you agree or disagree with Dr. Rubin that smoking is the principal cause of chronic bronchitis and chronic obstructive lung disease?" you simply stated, "I would agree with that;" correct?
A. I think we're probably following up on a previous exposition of cause.
Q. But you can't testify that you're certain that you were following up that exposition of cause; can you?
A. Well I've done it in every deposition, and I don't think there would be any exception there.
Q. In any event, it doesn't appear -- and I'm going

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to show you the question and show you the answer -- it doesn't appear that you deviated or said anything other than what I've read; correct, sir?

A. I would have to read --

Q. I'm asking --

A. -- through this.

Q. I'm asking you to read on page 92 the question and answer that I previously cited.

A. I understand what you're asking me, but I -- I would go back to the point that I'm certain that I discussed with Mr. Motley the issues of causation and the -- and the definitions thereof.

Q. Sir, would you read the question and would you read the answer that I've just read.

A. "Do you agree or disagree with Dr. Rubin that smoking is the principal cause of chronic bronchitis and chronic obstructive lung disease?"

Q. And your answer was?

A. "I would agree with that."

Q. Okay. Can I have it back, please?

A. But that's out of context and it is -- it is not accurate from the scientific point of view. The risks of smoking for bronchitis and chronic obstructive lung disease are well known, and no one contends that. But do they initiate the disease?

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Bronchitis, possibly. Chronic obstructive disease may be a genetic process.

Q. I'm going to move to strike all the last comments, it's not responsive to any question.

(Plaintiffs' Exhibit 1160 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1160 is the response to The Council for Tobacco Research U.S.A., Inc. to Plaintiffs' first set of requests for admissions. You eventually certified these answers; correct, Dr. Glenn?

A. Yes, I believe so.

Q. As a matter of fact, you signed them on the 18th day of July, 1995; correct?

A. Correct.

Q. You were asked numerous questions here as to whether or not you will admit or deny that certain diseases are caused by smoking; correct?

A. Correct.

Q. And you denied each and every one; correct?

A. Well in -- in a sense. We don't take any position as to whether smoking causes any disease.

Q. Would you look at the last sentence of each and every one of these responses and tell me what that

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last sentence says.

A. "Accordingly, CTR denies this request."

Q. So you have denied each and every request for admission; correct?

A. Based upon my definition of cause, which is amplified in each answer.

Q. I'd like you to turn to page four, request number six. Here you deny that smoking causes chronic obstructive pulmonary disease; correct?

A. Correct.

Q. And yet when you were asked the same question in a deposition, you state that you thought that smoking was the primary cause of chronic obstructive pulmonary disease.

A. I had already defined my terminology and I'd already been through that argument.

Q. And you understood that when you made that statement you were under oath; correct?

A. I did.

Q. Did you have a chance to read and sign that deposition that I just showed you, sir?

A. Did I have a chance to --

Q. Read and sign that deposition that I showed you?

A. I can't answer that.

MR. MERRITT: I'm not sure whether --

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Signature may have been waived in that. I don't know.

Q. Do you recall whether you ever went back and made any changes to that transcript?

A. I don't remember.

MR. O'FALLON: Why don't we take a break.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. O'FALLON:

Q. I'd like to go back to the previous exhibit, the response to the Council of Tobacco Research, U.S.A., Inc. to Plaintiffs' first set of requests for admission, and I'd specifically like to look at page five of that document, request number 7.

(Discussion off the stenographic record.)

A. All right, sir. Where?

Q. Request number seven, page five.

A. Yes, sir.

Q. Request number seven asks you to, quote, "Admit that cigarettes (or nicotine) are addictive," and the response is, first, that "CTR does not take any position as to whether cigarettes or nicotine are addictive;" correct?

A. Correct.

Q. However, it states that you, and apparently

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Mr. -- or Dr. McAllister, do not believe that cigarette smoking and nicotine are addictive based on your understanding of the meaning of the term "addictive;" correct?

A. Correct.

Q. You state that you do believe that cigarettes and nicotine are habituating; correct?

A. Correct.

Q. What is your definition of addiction?

A. Well I think addiction implies more than simply dependence on or enjoyment of the effects of using certain chemical compounds.

Q. Do you have a scientific definition of addiction, and can you please, then, tell me what the factors are for determining that?

A. No, I don't. I'm not an expert in the field of addiction, but I am a qualified observer. I don't believe I've seen anybody kill for a cigarette as they do for cocaine. I don't believe I -- that there are any factors which mitigate against stopping smoking or stopping the use of nicotine that would imply serious physiological consequences. Best witness to the fact that smoking is not an addiction is the millions of Americans who have stopped smoking, including myself, and I -- I experienced no

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withdrawal symptoms in stopping smoking nor I think do most people. I know that there are some people who are significantly habituated to smoking, and it may be the nicotine effect, it may be other factors, but I don't think that we can categorize addiction -- this is a purely personal opinion because I -- again, I'm not an expert, but even the experts have waffled in their definitions. The Surgeon General's definition has changed several times.

Q. Do you accept the Surgeon General's most recent definition of addiction and/or dependence as stated in the 1988 Surgeon General's report?

A. I am not familiar with it. I -- I read it at the time, but I can't recall exactly what was said.

Q. It appears to me that you're using what I would call a lay definition of addiction. Is that accurate?

A. I think that's more accurate than not. While I am a professional, I'm certainly not an expert in the field of addiction.

Q. You have not analyzed whether or not cigarette smoking and nicotine meet the criteria set out by the American Psychiatric Association's Diagnostic and Statistical Manual for Substance Dependence; correct?

A. Well I'm not a psychiatrist in the first place.

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In the second place, I think that even the experts are -- have disparate views of psychiatric definition as well as the Surgeon General's definition.

Q. I'm going to move to strike as non-responsive.

My question was that you have not analyzed whether or not cigarette smoking and nicotine meet the criteria set out by the American Psychiatric Association's Diagnostic and Statistical Manual for Substance Dependence; correct?

A. I have not.

Q. Nor have you used any scientifically accepted definition of addiction in apparently answering our request for admissions; correct?

A. I think the definitions that I gave you are scientifically acceptable.

Q. I thought your testimony was that it was fair to characterize your definition that you used here today as a lay definition.

A. Well I think it would be accepted by most layman, but I think it's also based in -- in science, the fact that smoking cessation does not carry with it the physiologic impact of cessation of addicting drugs.

Q. Do you feel you're more qualified on this issue than the Surgeon General of the United States?

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A. No, sir. The Surgeon General clearly had experts in the area to help to draft the statement.
Q. And as you've conceded, you're not an expert in this area; correct?
A. Correct.
Q. I think you've also denied in the request for admissions that cigarette smoking causes emphysema; right?
A. We return to the issue of -- of causation and the definition. Most certainly smoking is a risk factor, particularly in those people who have the genetic predisposition to emphysema.
Q. Is it your testimony that there definitely is a genetic predisposition to emphysema?
A. In some patients.
Q. And what's the basis of that conclusion?
A. The basis is work done at the University of Colorado that demonstrates a genetic abnormality that accounts for perhaps as many as 20 percent of patients with emphysema.
Q. How about the other 80 percent, doctor?
A. Well we don't know. We've just scratched the surface on this genetic business. We're progressing as a fairly good clip toward a better understanding of the genetic basis of disease.

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Q. And again you're not certain that, whatever genetic basis it may be, it isn't aggravated by cigarette smoke; correct?

A. I beg your pardon? I have just said that I think smoking may aggravate a preexisting genetic condition.

Q. So in that case, would it be a substantial contributing factor to bringing about the disease?

A. Well "substantial contributing factor" is a legal term. I would say it's certainly a risk factor, and I think somebody that's got a predisposition -- predetermined genetic abnormality which can be identified and in which smoking is known to be a risk factor should certainly be counseled about the wisdom of smoking.

Q. They should be told to quit; correct?

A. They should be told to never stop -- never start.

Q. But if they started, they should be told to quit.

A. Yes.

Q. And if you had a patient, you would tell them to quit; correct?

A. Yes, and have done so.

Q. For emphysema patients?

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A. No. I don't treat emphysema.
Q. Are you aware of any research done by The Council for Tobacco Research on inhalation tests with dogs?
A. Yes.
Q. Are you aware of the research done at Battelle Pacific Northwest Laboratories in Richland, Washington?
A. Vaguely. That was before my time.
Q. But you've looked at the documents?
A. No.
Q. Was that sponsored by CTR?
A. I think it was.
Q. And that research demonstrated that the dogs there developed definite signs of emphysema; correct?
A. I'm not sure about that. I think there were some questions. There were inflammatory changes after exposure to intense smoke.
Q. I'm going to show you what's been previously marked as Plaintiffs' Exhibit 435. This is a document that's been previously marked as Plaintiffs' Exhibit -- what did I say, 435?
MR. FALKENSTEIN: Yes.
MR. MERRITT: 435, yes.
Q. 435. Has the Bates stamp number 1001801280

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through 1283.

Have you seen this document previously, sir?

A. No, sir.

Q. This is a document from the files of Philip Morris; correct?

A. It appears to be.

Q. This is a memo dated July 17th, 1974 from a R. D. Carpenter to a Dr. T. S. Osdene; correct?

A. Correct.

Q. Do you know who Dr. Osdene is?

A. Yes. He was one of the research personnel at Philip Morris, I believe, in their Richmond office.

Q. Okay. And how about Mr. Carpenter?

A. I don't know Mr. Carpenter.

Q. Okay. This involves a visit to Battelle Pacific Northwest Laboratories, Richland, Washington, July 3rd, 1974; correct?

A. It's so labeled.

Q. He states that "Dr. Ray Palmer took me on a tour of the Battelle Biological Division;" correct?

A. Yes.

Q. "We started the day with a 25-mile drive into the Hanford Reservation, where they have their smoking dogs located. When they started the project over 10 years ago they needed a source of short-lived

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reactor by-products, so the lab was located near the cooling-water discharge line from a reactor. The reactor is now shut down and they are testing radon daughter activity as well as the cigaret smoke." Correct?

A. That's what is indicated.

Q. Okay. Does this appear to be the laboratory that was being funded by CTR?

A. I don't know.

Q. I'm going to show you a second document that I need marked. I just found this document.

(Plaintiffs' Exhibit 1161 was marked for identification.)

BY MR. O'FALLON:

Q. 1161 is a document Bates stamp numbered 1000323262, it's dated April 5th, 1978. Do you have that document in front of you?

A. Yes.

MR. MERRITT: 1968?

MR. O'FALLON: I'm sorry, 1968. You're correct.

Q. This states that "Some of the cigaret company research directors have received through their legal departments copy of a Council for Tobacco Research-U.S.A. report on the inhalation project being carried

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out under C.T.R. sponsorship by Battelle Northwest under the direction of a chief investigator named Bair." Correct?

A. Yes.

Q. It says, "This project involves inhalation of smoke by beagles which have been previously exposed to radioactive materials;" correct?

A. Correct.

Q. It says, "I understand this report was sent out by Dr. Hockett on or about February 23rd."

Based on this document and the description of the research facilities in the previous document, does it appear that the Battelle laboratory that's being discussed in the July 17th, 1974 document is in fact the research lab that was being sponsored in part by CTR?

A. It would appear to be. But this was in 1968, 30 years ago, and I was not affiliated with CTR at that time, so I can't attest to that. But I know that CTR did have contractual research projects with Battelle at one time in the past and that it did involve exposure of beagle dogs to cigarette smoke.

Q. And the results of that investigation were published?

A. I don't know about the publication. I do know,

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I think generally, the results. I think the dogs developed chronic bronchitis and some other changes, but there was a question of whether the tracheostomies were appropriately performed, whether some of the changes that were seen were traumatic and surgical rather than inflammatory and smoke-induced.

Q. Now you said this was contract research?

A. I believe it was.

Q. Contract research is different than the typical grant research in that the CTR obtains control over the results of contract research; correct?

A. Generally speaking, but it depends on the contract. You know, contract research is a common thing. It happens with the NIH, the National Cancer Institute, all of the institutes of health.

Q. I understand your testimony --

A. And the contract is different from project to project.

Q. But generally you don't have the complete independence, the researcher doesn't have the complete independence that they would with grant research because there are certain contractual requirements that the researcher must meet; correct?

A. It will vary from one contract to another.

Q. For instance, Dr. Hamburger was required to

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submit his research to the SAB for approval before they would agree to publication; correct?

A. I believe that's true, but that's hearsay as far as I'm concerned.

Q. Well --

A. But Dr. Hamburger published -- all of his work was published.

Q. Certainly. But he didn't do it without numerous letters from the CTR about whether he should or not; correct?

A. I -- I'm not privy to all that correspondence. I know that Dr. Hamburger was embittered because his research support was withdrawn after 12 fairly unfruitful years of investigation.

Q. Whether Dr. Hamburger was a decent researcher or not I'll leave to other people. But my point is that the contract research fundamentally differs from grant research in that the independence of the researcher is not as complete; correct?

A. Not -- not necessarily. That's my answer. It varies from one contract to another.

Q. Okay.

A. And I don't know the terms of the contract involved here.

Q. Was this a special project?

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A. I don't know that. I think it was a contract and I think it was probably initiated by the Scientific Advisory Board, but I don't know that.

Much of the contract research that was done was initiated through CTR itself.

Q. But some of it wasn't?

A. I don't know the answer to that.

Q. At the second paragraph of the document that's been previously marked it states that "The dog inhalation laboratory is equipped so that 18 dogs" --

A. You'll have to give me a minute to find that.

All right.

Q. Okay. It states that the -- quote, "The dog inhalation laboratory is equipped so that 18 dogs are exposed at a time;" correct?

A. Correct.

Q. "Two technicians handle 9 dogs each;" right?

A. Right.

Q. "The dogs seldom showed any signs of discomfort, and some even seemed to enjoy the smoke;" correct?

A. That's what it says.

Q. "If the dogs did exhibit distress the operator adjusted the smoking mask so that the smoke was slightly diluted with air;" correct?

A. That's what it says.

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Q. So these dogs are apparently smoking via masks; correct?
A. Correct.
Q. They wouldn't be smoking due to a tracheostomy; correct?
A. These dogs were, yes.
Q. Okay. So there wouldn't be any issue of trauma I think you tried to testify about earlier.
A. Well it is traumatic to put a mask on a dog.
Q. Well, but it's not going to cause any trauma down in the lungs like you do with a tracheostomy; correct?
A. Yeah, yeah.
Q. Says "Each dog is given smoke twice daily, for 7 days a week;" correct?
A. Correct. But you must recognize, this is the first time I've seen this document and I was not given time to read it.
Q. Okay. It also states that "The Battelle people all feel very strongly that animals must be exposed for 7 days per week if the test is to be meaningful;" correct?
A. That's what it says.
Q. "The dogs smoke for 1 hour in the morning and 1 hour in the afternoon;" correct?

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A. That's what it says.
Q. Says "They did not seem to cough during the smoking period, but some of them did cough after their smoking was over;" correct?
A. That's what it says.
Q. "Dr. Palmer said that they were showing definite signs of emphysema;" correct?
A. That's what it says.
Q. Was that reported in the public literature?
A. I don't know.
Q. You would agree that if it wasn't reported, it should have been; correct?
A. I don't know. I think this would have been a judgment that somebody made in 1974 either at Battelle or at CTR or somewhere along the line, but there are too many factors that would have to be considered.
Q. That would certainly be strong evidence that smoking causes emphysema; correct?
A. I'm not sure of that.
Q. Got dogs smoking cigarettes and they appear to be getting emphysema; correct?
A. Well the statement here is "Dr. Palmer said that they are showing definite signs of emphysema." Did they actually have emphysema or not?

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There's much that I don't know here. This is a very incomplete report.

Q. At least at this point in time they were showing definite signs of emphysema; correct?

A. "Dr. Palmer said that they are showing definite signs of emphysema."

Q. Do you know whether any representative of The Council for Tobacco Research ever went public and said we've been doing inhalation studies with dogs in which the dogs have now shown definite signs of emphysema?

A. You mean 30 years ago.

Q. Well 1974 is 23 years ago.

A. Twenty-three years ago.

Q. Yes.

A. No, I don't know.

Q. And 1973 is also approximately 19 years after the Council for Tobacco Research was organized; correct?

A. Yes, I guess so.

Q. So you're now some 19 years into the research program done by The Council for Tobacco Research; correct?

A. What is your implication there, The Council for Tobacco Research was suppressing this information? I

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don't think so.

Q. I move to strike as non-responsive.

My question was: So you're now some 19 years into the research program done by The Council for Tobacco Research; correct?

A. Yes.

Q. Now you would agree that the implication of the Frank Statement and subsequent statements by the TIRC and the CTR was that the CTR and TIRC was going to undertake meaningful research on the issue of whether smoking caused disease; correct?

A. The implication of the Frank Statement was that the TIRC/CTR would sponsor research, valid biomedical research into questions of smoking and health, and that was done.

Q. It also has to be meaningful research; that is, it's got to be research that's looking directly at the issue of whether smoking causes disease; correct?

A. Yes. I think that the example just given of the exposure of animals to smoke is -- is certainly pertinent.

Q. Okay. And again that was contract research as opposed to grant research; correct?

A. Well there are --

It's clear that I need to explain contract

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research. Most of the time contracts for research were issued because a project was of such magnitude and of such expense and required such elaborate support that no single investigator would have submitted a grant application along the lines of the proposed project. As a consequence, a contract is drawn to assure the investigating agency -- and it usually is an agency, a large laboratory with many people involved -- assure them of continuing support of the project. No university or independent investigator would have undertaken a project of this magnitude, I don't think; it required too much strategic planning and tactical equipment in order to mount the project. And most projects -- most contracts are within that framework.

Q. I'm going to move to strike as non-responsive. My question again --

A. I'm trying -- I'm trying to be responsive. I'm trying to make it clear that the reason for a contract is different for -- from the usual grant application.

Q. I'm going to move to strike as non-responsive.

And again, my question was: This was in fact contract research, to the best of your recollection; correct?

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A. Yes.
Q. It's certainly not your testimony that major research institutions and universities turn down huge block grants of money to do research; correct?
MR. MERRITT: Object to the form of the question.
A. Do universities turn down --
Q. Huge block grants of money to do research.
A. What do you man by a "block grant?"
Q. Well a grant-in-aid. I mean your grants were basically made to researchers; correct?
A. Well a block grant is different from a grant-in-aid.
Q. Well a grant-in-aid, or whatever kind of grant that was made by CTR, were supposed to be grants of money for research that was unfettered and independent of any control by the CTR; correct?
A. Well grants are made with the express intent that the investigator is free to pursue the investigation and to report the results, and they are encouraged to do so.
Q. And they don't have to clear those results through any organization like the CTR; correct?
A. Do not.
Q. And contract research typically has, as a

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pre-design, that the results have to be cleared before the contracting body, such as the CTR, prior to publication; correct?

A. I answered that previously, Mr. O'Fallon. The contracts vary from one project to another.

Q. And you can't tell me as you sit here today whether Battelle was under a contract that required them to submit that information to you --

A. I can't --

Q. -- prior to publication or not; correct?

A. Well I imagine that if there was a contract, it still exists.

(Plaintiffs' Exhibit 1162 was marked for identification.)

BY MR. O'FALLON:

Q. This is a document Bates stamp numbered 301083806. It's dated April 7 -- it's dated 17 April to 12 May 1958, "REPORT ON VISIT TO U.S.A. and CANADA;" correct?

A. Is this not the report of the same visit we discussed previously? They look like the same players.

Q. It might well be, but this was produced separately. Whether it's contained in the previous document, I'm not exactly sure.

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This is entitled "ATTITUDE OF U.S. INDUSTRY TO BIOLOGICAL TESTING;" correct?

A. Yes.

Q. Again, this is a document produced by British-American Tobacco Company Limited; correct?

A. Appears to be.

Q. The first paragraph states that "Liggett & Myers stayed out of T.I.R.C. originally because they doubted the sincerity of T.I.R.C. motives and believed that the organization was too unwieldy to work efficiently;" correct?

A. Yes.

Q. They state that "They remain convinced that their misgivings were justified;" correct?

A. That's what it says.

Q. It says, "In their opinion T.I.R.C. has done little if anything constructive, the constantly reiterated 'not proven' statements in the face of mounting contrary evidence has thoroughly discredited T.I.R.C., and the S.A.B. of T.I.R.C. is supporting almost without exception projects which are not related directly to smoking and lung cancer." Correct?

A. That's what it says.

Q. And if that's true, that would certainly be a

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violation of CTR's and TIRC's pledges to the public; correct?

A. Well this was the opinion of Liggett & Myers Tobacco Company, and -- and these three itinerant observers may or may not have been accurate in their interpretation, so I -- I can't say that anything is in violation of anything.

Q. Again, these three observers appear to be employees of the British-American Tobacco Company; correct?

A. They would appear to be.

Q. And that's the company that owns Brown & Williamson Tobacco Company; correct?

A. It would appear.

Q. And Brown & Williamson Tobacco Company is one of the founding members of the TIRC; correct?

A. They were.

Q. Look on the last page, page two. It states in the last paragraph that "It is perhaps significant of the trend of thought in T.I.R.C. that we are told by Hockett that, in addition to work supported by grants which can be freely published, the S.A.B. is now considering contracting out biological work on a commercial basis." Correct?

A. Correct.

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Q. "This would be -- This at first would be exploratory work on quantitative carcinogenicity, but the change of principle is that for the first time the line of research and publication policy would be completely in the hands of the Scientific Advisory Board." Correct?

A. That's what it says, and that would be true depending upon the way the contract was written and issued.

Q. And again, the implication in the Frank Statement and subsequent press releases by the TIRC would be that all of their researchers would be completely free to publish whatever results they wanted; correct?

A. That's not --

That's not true of contract research.

Q. I understand.

A. It's true of grant.

Q. So contract research would actually be in violation of the implication that TIRC --

A. No, no.

Q. -- made to the public --

A. No, no.

Q. -- that everybody would be free to publish whatever result they found.

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A. No, that's not incompatible or inconsistent at all. Contract research has always carried with it the implication that the findings of the research are the property of the contractor.

Q. Which would be the CTR.

A. CTR.

Q. So now CTR was not in the position of sponsoring independent research, it was in the position of actually specifically controlling direct research.

MR. MERRITT: I would object to the form of the question. It's unfair. When you say "now," what are we talking about, what time period?

MR. O'FALLON: 1958 and onward.

MR. MERRITT: Do you -- do you remember the question?

THE WITNESS: Yeah, I think I do.

MR. O'FALLON: Well let's just have it read back.

(Record read by the court reporter.)

A. Well that's not true. That's a generalization that -- that I won't subscribe to. CTR continued its grant program. CTR also recognized the need for certain contract work. And I think it is entirely consistent and compatible with the -- with the Frank Statement.

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Q. Well the statements were -- that was made to the public was that all the researchers would be free to publish --

A. Statements that were made to the public were that, yes, research results would be reported, but it doesn't say that contract work cannot be issued. It doesn't say that the terms of a contract might -- might preclude publication without prior approval.

Q. The clear implication of your public statements --

A. No, you -- you -- you're asking me to --

Q. Sir --

A. -- assume your assumptions.

Q. Sir, --

A. Uh-huh.

Q. -- let me finish my question.

A. Yeah.

Q. The clear implication of CTR's numerous public statements was that all of their researchers would be completely free and independent to publish whatever findings resulted; correct?

A. No, I don't interpret it that way.

MR. O'FALLON: Let's go off the record for a second.

THE REPORTER: Off the record, please.

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(Discussion off the record.)

BY MR. O'FALLON:

Q. Would you agree that during its existence, CTR has conducted approximately 19 million dollars' worth of contract research?

A. I don't know the figure.

Q. Would that be consistent with your knowledge of the amount of contract research conducted by CTR?

A. I think it's consistent. I know that one project amounted to some 12 million dollars. That is to be taken within the context of the total program of some 300 million dollars in grants.

Q. Move to strike the last part as non-responsive.

I've shown you a document that's been previously marked as Plaintiffs' Exhibit what, 1533. This is a document Bates stamp numbered 110316203 through 205.

Have you seen this document previously?

A. No, sir.

Q. This is a document that's entitled "SUPPLEMENTARY REPORT ON DISCUSSIONS WITH OSDENE AND (PHILIP MORRIS);" correct?

A. Yes.

Q. And you're familiar with Dr. Osdene?

A. I don't know Dr. Osdene. I know he was an employee in the research division of Philip Morris.

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Q. I'd like you to look on the second page under number (f). Do you see where it says "Relations with the C.T.R.?"

A. Yes, but I don't know relations of whom.

Q. Well apparently he's talking about Osdene's relations with the CTR; correct?

MR. MERRITT: I'm going to object to that. You're just asking the witness to speculate about that.

Q. Well let's read it. It says, quote, "These could scarcely be worse! Osdene's view, parenthetical, Philip Morris's view, question mark, end parenthetical, was that the C.T.R. did virtually no useful work and cost a vast amount of money." Correct?

A. That is what's recorded.

Q. He --

A. That is Dr. Osdene's view.

Q. And again, he's a research --

A. He's an employee of Philip Morris.

Q. Was he a research director, do you know?

A. He was in the research department. I don't know whether he was a director or not.

Q. Okay. He's a fairly-high-up employee with Philip Morris; correct?

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A. I can't tell you that.
Q. It says, "He was highly critical of Little, Hoyt and Hockett and considered the most able member of the staff was probably Kreisher;" correct?
A. That's what it says.
Q. "The S.A.B. was not considered to be very -- very effective, but he was not critical of any individual member." Correct?
A. It is so written.
Q. He says, "Furst was described as a 'reasonable second-rater;'" correct?
A. That's a very unfortunate characterization.
Q. But you would agree that at least two companies have now expressed the view that CTR's work is relatively useless; correct?
A. No, I don't think --

Two companies did not express the view. Dr. Osdene expressed his view. This is not necessarily a company view. In fact they even question whether it is Philip Morris's view.

Q. I'm going to show you a document that's been previously marked as Plaintiffs' Exhibit 143. This is a document dated November 12th, 1971, Bates stamp numbered 1000255276 through 278. It's from an R. N. Saleeby, Jr., to Dr. Helmut Wakeham; correct?

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A. Yes.
Q. And it's a review of the 71 abstracts of CTR grants in force on November 1st, 1970; correct?
A. It purports to be.
Q. He states that "The most significant" -- at the middle of the page he states that "The most significant reaction I had in reading the abstracts is the feeling of distance many of them have to the problem of smoking and health. By my subjective accounting, 430M, or 17 percent, is irrelevant to the supposed interests of CTR." Correct?
A. That is what is written.
Q. So now you've got Philip Morris stating that much of what CTR does is irrelevant; correct?
A. Philip Morris is not stating it, Mr. Saleeby is.
Q. Who has apparently been given the assignment to assess CTR by Philip Morris, correct?
MR. MERRITT: I'm going to object to that, assuming a fact not in evidence.
A. I don't know whether he was given the assignment or whether this was a gratuitous commentary.
Q. Well was the industry given to making gratuitous commentary about the organization they themselves organized, funded and controlled?
MR. MERRITT: Object to --

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It calls for speculation by the witness.
A. I don't know that the industry was given to anything. I think Mr. Saleeby was given to expressing his opinion, and that's all that this represents. This represents Mr. Saleeby's personal commentary on the research that was being sponsored, and I'm not sure that anybody else would have agreed to this.
Q. Well apparently Dr. Osdene and Liggett & Myers agreed with it.
MR. MERRITT: Object.
Q. Correct?
MR. MERRITT: Object to the form of the question.
A. No, I don't -- I don't interpret it that way.
Q. You would agree that CTR and its successor, TIRC, should not have suppressed any research; correct?
A. Well CTR was the successor to TIRC.
Q. Neither of those companies, neither of those two corporations should have been suppressing any smoking-and-health research; correct?
A. I don't -- don't believe that they ever were.
Q. Nor would it be appropriate for them to have members of their Scientific Advisory Board approach

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individuals at contracting or grant -- grantor institutions to try to influence their public statements; correct?

A. I'm not sure I understand the thrust of the question. The implication is that CTR attempted to control what investigators had to say or publish, and that's simply not true.

Q. And if it were true, it would certainly be wrong; correct?

A. It is not true.

Q. But if it were true, it would be wrong.

A. It is not true.

(Plaintiffs' Exhibit 1163 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1163 is a document Bates stamp numbered "CTR MINNESOTA -- CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION," Bates number 50067727 through 67728.

Have you seen this document previously?

A. No.

Q. This is a document dated October 23, 1956; correct?

A. Yes.

Q. It's a memorandum; right?

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A. Yes.
Q. It's from a W. T. Hoyt; correct?
A. Yes.
Q. And who is W. T. Hoyt?
A. Mr. Hoyt was the president of CTR.
Q. And it was to T. V. Harnett -- Hartnett; right?
A. Correct.
Q. And who was Mr. T. V. Hartnett?
A. Mr. Hartnett was, I believe, chairman of the board at that time.
Q. So chairman of the board of TIRC?
A. Yes.
Q. And the subject is "Statement of F. G. Bock in Buffalo, New York on October 12th, 1956;" correct?
A. Appears to be.
Q. First paragraph says that "Attached is a photostat of the item which appeared in the NEW YORK WORLD TELEGRAM & SUN on October 12th, and which was subsequently picked up in the current issue of ADVERTISING AGE;" correct?
A. Correct.
Q. "For your information this did not appear in other New York papers." Correct?
A. Yes.
Q. It says, "As you are aware, we have been

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concerned for some time about the expressions which emanate from Roswell Park Memorial Institute."

Correct?

A. Yes.

Q. "These expressions apparently deal exclusively with statistical associations either originating at Roswell Park or elsewhere;" correct?

A. Yes.

Q. "As near as we can ascertain, the genesis of the smoking connection with either lung cancer or cancer of the bladder stems from a statistician at Roswell Park by the name of Abraham Lilienfeld who has done some work on this subject, and who apparently is in the Hammond camp of thinking on the whole subject;" correct?

A. Yes.

Q. The Hammond camp would be that camp which believed that smoking causes various diseases; correct?

A. Yes.

Q. It says, "Just a year ago Dr. Moore gave a paper at the University of Minnesota which described the methods he and his associates intended to use in laboratory research on the subject of tobacco and any possible influence it might have on lung cancer. We

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were quite concerned at that time when we found out that the paper implied that statistical associations had indicated a carcinogen in tobacco." Correct?

A. Correct.

Q. "We were even more alarmed when we discovered that he intended to mention the TIRC as a supporter of his work." Correct?

A. Yes.

Q. "At that time, through Dr. Hockett, we arranged for him not to mention the TIRC and pointed out that at least insofar as our grant was concerned, we preferred to have no comments prejudging its results until sufficiently conclusive findings had been published in an accredited scientific journal or given on equally accredited scientific platforms." Correct?

A. Yes.

Q. In other words, a CTR representative approached this man and influenced him as to what he would say about his research; correct?

A. No, I don't interpret it that way at all.

MR. MERRITT: Let me interrupt. If you're going to have him answer -- answer questions about this episode in this document, I think he should be entitled to read the entire document rather than just

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reading the first three paragraphs and then --

MR. O'FALLON: If you would like to take the time to read the entire document, you can do so; then we'll come back and ask questions.

(Witness reads document.)

A. All right, I think I understand it.

Q. Let's go back to the first page.

A. Yes.

Q. Again, when we left off we were talking about the sentence that said, "At that time, through Dr. Hockett, we arranged for him not to mention the TIRC and pointed out that at least insofar as our grant was concerned, we preferred to have no comments prejudging his results until sufficiently conclusive findings had been published in an accredited scientific journal or given an equally accredited scientific platform;" correct?

A. That's what it says.

Q. It says, "Since that time we have had no problems until the Associated Press dispatch appeared in the WORLD TELEGRAM on October 12th;" correct?

A. Correct.

Q. Goes on to state, "While the problem of influencing the statements of scientists is a ticklish one, I have personally spoken to Dr. Kotin

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who has been our principal SAB contact with Roswell Park as he knows Dr. Moore and Dr. Bock quite well;" correct?

A. "Mr. Bock."

Q. Oh, "Mr. Bock."

"I have asked Dr. Kotin if he will personally see these two people and explain to them in somewhat fuller detail the paragraphs in the -- in the, quote, Statement of Policy Containing Conditions and Terms Under Which Project Grants Are Made;" correct?

A. Correct.

Q. So you've got a member of the SAB going out and basically trying to quell statements by a scientist who's been given a grant.

A. Absolutely not. You totally misinterpret this memorandum. What they are upset about here and what this exchange is -- is all about is the fact that investigators were pre-reporting through the lay press their scientific findings, and that they were not following policy regarding conclusive report in an accredited medical journal or at an accredited society.

Q. Well sir, most --

A. This is -- this is entirely appropriate. And you totally misinterpret it. They're not trying to

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quell anything; in fact, they acknowledge that they're not trying to quell it by their statement, "While the problem of influencing the statements of scientists is a ticklish one," in other words, this is a prickly area and we don't want to exercise any undue influence. At the same time we don't want them reporting scientific work purportedly supported by TIRC in the New York World Telegram & Sun or the current issue of Advertising Age.

Q. Especially if it's going to report that there's a connection between lung cancer and smoking; correct?

A. Well that was shot down also, and I would call your attention to the second-to-last paragraph, that "although they have exposed mice to regular inhalation of cigarette smoke in the laboratory for 19 months - practically a full lifetime - at the last report no lung cancers had developed beyond the small number to be expected in that strain under normal conditions."

Q. Well the lung cancer --

A. So that's a preliminary report, and you --

Q. Lung cancers have developed; correct, sir?

A. They do. They do in that strain of mice.

Q. Well --

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A. They do --

They do in many, many experimental animals.

Q. And of course you don't know what strain of mice they're talking about here; do you?

A. Don't know. It's not reported.

Q. This is now the first time you've seen the document; correct?

A. This is the first time I've seen the document, but my interpretation of it I'm absolutely positive.

And by the way, it's Dr. Kotin that you refer to.

Q. Well the fact of the matter is is that you're stating they're out there reporting this in the lay press; right?

A. That is correct.

Q. The fact of the matter is that what it's talking about in the second paragraph is the presentation of a paper at the University of Minnesota; right?

A. And the second paragraph you're talking about --

Q. Let's look at the third paragraph, sir.

A. The third paragraph.

Q. Okay.

A. Dr. Moore -- I think that's Dr. George Moore, whom I knew.

Q. Well it states that he --

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A. -- gave a paper at the University of Minnesota, but that --

University of Minnesota is not an accredited peer-reviewed society.

Q. It's a --

You understand that the University of Minnesota is a -- is a well-established and distinguished research institution; correct, sir?

A. Oh, certainly I know that.

Q. Right?

A. And I have great respect for it. But it is not a peer-reviewed platform. He can go out there and present anything he wants to in any terms he wants to. This is --

He's an invited lecturer. He comes and talks about any topic he wants. That is not the same as appearing on a scientific program with a national platform. That's entirely different. He can go out there and express his opinion on space stations or whatever he wants to talk about at the University of Minnesota, but it is not the same as a peer-reviewed platform for the presentation of scientific work. And you're all wrong about this.

Q. Well he went out and he presented at the University of Minnesota the methods that he was going

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to use in the laboratory --

A. Intended to use --

Q. Sir -- sir, don't interrupt me. I've been very tolerant of this, but don't interrupt me.

It says, "Just a year ago Dr. Moore gave a paper at -- at the University of Minnesota which described the methods he and his associates intended to use in laboratory research on the subject of tobacco and any possible influence it might have on lung cancer. We were quite concerned at that time when we found out that the paper implied that statistical associations had indicated a carcinogen in tobacco." That's what they were concerned about; right?

A. That's what they say.

Q. And they were even more alarmed because the paper reporting that there was a carcinogen in tobacco may be indicated to have been supported by the TIRC; correct?

A. Correct.

Q. And that's when Dr. Hockett arranged for Dr. Moore not to mention that the TIRC -- not to mention the TIRC, right?

A. For the simple reason that they were --

He was making speculation. This was a -- this was over 40 years ago. If -- if indeed Dr. Moore

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suspected a carcinogen in tobacco, it hadn't then been proven. Furthermore, they were alarmed that he was issuing this information through the lay press, that it had not been peer reviewed, that it had never been submitted for publication in a -- in a qualified scientific journal, that it had not been presented from a platform of -- peer-reviewed program. And your interpretation is just absolutely wrong. They're not trying to quell anything, they're trying to make him play by the rules of the -- of the scientific community.

Q. Okay. The statement in here is "an equally accredited scientific platform." Is it your testimony that the University of Minnesota is not a, quote, equally accredited scientific platform?

A. Yes, sir, because it's not peer reviewed.

He was invited to come out. He gave a speculative paper on what he -- the methods which he and associates intended to use in the laboratory.

Q. I'm sorry. Where does the word "peer review" appear in that third paragraph on the first page of Plaintiffs' Exhibit 1163?

A. It doesn't appear. Those are my words. But I'm trying to explain that this is not a peer-reviewed platform, this is not a national meeting where an

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abstract is submitted where it is reviewed by a program committee whether it is deemed acceptable for public presentation or not. This is simply giving a paper at Minnesota where he described the methods he and his associates intended to use in laboratory subject.

Q. Where does it say that this was never reviewed through a committee? Where does it state that?

A. It doesn't say that, but I know for --

I've been in this business for 45 years.

Q. You're going to testify --

A. I'm going to testify --

Q. -- as you sit here today, sir -- strike.

You're going to testify as you sit here today that on October 23rd of 1956, you know for a fact that people who made presentations at the University of Minnesota concerning scientific matters did not have to go through any kind of a committee before making that presentation? That's your testimony as you sit here today?

A. That is my testimony, and that was standard practice and is standard practice in all medical institutions across this country.

Q. And you're familiar --

A. And if you can get somebody to testify

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differently about that, I would be delighted to hear him.

Q. And so you think it's perfectly fine when this independent arm of the tobacco industry goes out and tells people, who are simply receiving money and supposed to be independent, that they can't do certain things, like they can't make presentations at the University of Minnesota --

A. They didn't tell him that.

Q. -- and you can't say --

A. They didn't tell him that.

Q. -- not to use the word TIRC --

(Discussion off the stenographic record.)

THE REPORTER: Let's go off the record a moment, please.

BY MR. O'FALLON:

Q. So again, you think it's perfectly acceptable to use members of the Scientific Advisory Board to go out and use their influence to have researchers hold back on their findings and make sure that they don't use or attribute their work to the TIRC; correct?

A. Well there are two assumptions there. They are both invalid in my view. First is that a member of the SAB would go out and try to influence an investigator. And there -- we have no evidence that

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that's true. What is stated here is that they did not want Dr. Moore to publish in the lay press prospective findings of a study he intended to undertake and attributed to TIRC, and that's a perfectly reasonable approach. The National Institutes of Health would have had exactly the same approach under the circumstances.

Q. Move to strike the last comment as lacking any foundation.

This memo indicates that Dr. Hockett spoke with Dr. Moore about his presentation; correct?

A. Yes.

Q. It indicates that they're going to ask Dr. Kotin to go out -- Kotin to go out and talk to Dr. Moore and Dr. Bock; right?

A. Correct.

Q. Are you familiar with the work of Dr. Auerbach?

A. Only vaguely. It was a long time ago.

Q. Do you understand that Dr. Auerbach claimed that he had induced cancer in the lungs of animals exposed to smoke through inhalation?

A. I understand he claimed that, but I also understand there's a good deal of controversy among pathologists as to whether that was actually the case.

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Q. In fact, the industry was quite concerned about Dr. Auerbach's studies and did what they could to counter what he was reporting; correct, sir?

A. Not to my knowledge.

Q. I'd like to show you a document that's been previously marked as Plaintiffs' Exhibit 171. This is a document Bates stamp numbered 1000837391 through 392 dated February 25th of 1970.

Have you ever seen this document previously?

A. No, sir.

Q. This is a memorandum from an. R. Fagan to Dr. Helmut Wakeham concerning Auerbach's smoking vehicle -- beagles; correct?

A. Correct.

Q. This indicates at number one that "One dog, which was an inveterate smoker, was placed in a stall to demonstrate how the animals smoked;" correct?

A. Yes.

Q. Apparently the cigarette used was stronger than the brand they were using and the behavior of the dog showed that he, too, was not used to this kind of smoke; correct?

A. Correct.

Q. Look at number 6). It says, "Dr. Auerbach showed me photomicrographs of what looked to my

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non-expert eye as typical invasive carcinoma."
Correct?
A. Correct.
Q. "He read me a report from Dr. John Berg, N.C.I." --
That's the National Cancer Institute?
A. Correct.
Q. -- "which corroborates this diagnosis;" correct?
A. That's what is written. Whether it's correct or not is open to some speculation.
Q. Well this is an industry representative; correct?
A. I don't know Mr. Fagan.
Q. This is an internal Philip Morris document, sir.
A. Fine. I accept that.
Q. It said, "Dr. Auerbach showed me several notations in which -- in which Dr. S. Nielsen, veterinary pathologist, agrees with Auerbach's readings of slides;" correct?
A. Correct.
Q. Look at paragraph 8). It says, "Judging from my reading of a copy of the talk given to the American Cancer Society and from what I saw at the V.A. Hospital in East Orange, New Jersey, I would say that the experiment is a crude one but effective in that

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carcinoma in dogs has been produced." Correct?
A. That's what is written.
Q. It says, "I am not expert enough to distinguish between these early carcinomata, pulmonary adenomatosis, carcinoma in situ, et cetera. This I leave to the expert pathologists." Correct?
A. Correct. And I think he is stating a fundamental fact, he's not qualified to make any judgment.
Q. But apparently there's at least two expert pathologists who have confirmed Dr. Auerbach's findings; correct?
A. There were several that questioned it.
Q. Most of those are associated with the tobacco industry; right, sir?
A. I don't know that.
Q. Well let's take a look at what B&W had to say about it. I'm going to hand you a document that's been previously marked as Plaintiffs' Exhibit 428. This is a document that's Bates stamped 690004474 through 4476. It's written by a Dr. I. W. Hughes.
Are you familiar with Dr. Hughes?
A. No.
Q. It states on the front, quote, "I would imagine that the industry could be asked what it is going to

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do following the Auerbach publication." Correct?

A. Yes.

Q. "It is possible to adopt the stance that, quote, the work is significant and important, and the industry will sponsor a research project (in which Auerbach corroborates) aimed at repeating the experiment under statistical control to determine the significance of the rate of incidence of invasive squamous carcinoma in relation to dosage, et cetera.'" Correct?

A. As written.

Q. Did that ever happen?

A. I don't know that.

Q. Then it states, "(This type of experiment needs to be done so that the industry can become aware of how it might have to change its products, as inhalation techniques and experimental procedures become even more sophisticated and possibly produce even more damaging results.)" Correct?

A. Essentially.

Q. Let's look on the second page, Bates number 475. Again this is entitled the "AUERBACH/HAMMOND PAPER;" correct?

A. Correct.

Q. It says, "1. Although open to criticism on

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several counts, the general standard of the paper is good. I am of the view that this shows it is now possible to produce tumors in the respiratory system of an animal by direct inhalation." Correct?

A. Yes.

Q. Did the tobacco industry ever come out and state that Auerbach's work showed that it was now possible to produce tumors in the respiratory system of an animal by direct inhalation?

A. I'm sorry, I'm missing that.

Q. Did the tobacco industry ever come out and publicly state that Auerbach's work demonstrated that it was now possible to produce tumors in the respiratory system of an animal by direct inhalation?

A. I don't know that.

Q. You would agree that the production of tumors in the respiratory system of an animal by direct inhalation would be a significant step in proving that cigarette smoke caused lung cancer; correct?

A. I would agree with that statement. But I'm not -- I will not agree that they had actually produced tumors.

This paper in question was submitted to the Journal of the American Medical Association which

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turned it down because the quality of the photomicrographs were so poor that it did not demonstrate conclusively that any malignancies had occurred.

Q. The paper was published, though; wasn't it, sir?

A. Paper was published in one of the cancer epidemiology journals, I believe.

Q. You don't know for certain, though; do you, sir?

A. Yes, I know it was published.

Q. Well I know it was published too. You don't know where it was published, though; do you, sir?

A. No.

THE REPORTER: We have to change tape. Off the record, please.

(Discussion off the record.)

BY MR. O'FALLON:

Q. At number four Dr. Hughes states, quote, "This paper must affect the thinking within B&W, and would seem to me to relegate stances on good or bad statistical evaluations to second place." Correct?

A. That's what is written.

Q. It says, "Indeed, this publication could reverse the hoped-for consequence of something like Project Truth;" correct?

A. Yes.

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Q. Do you know what Project Truth was?
A. No.
Q. Let's look at the last page, and specifically parenthetical (h). He states that, quote, "All of the above leads me to the view that correlation with the human is still way off; but I accept that significant tumorigenic conditions following inhalation have been achieved." Correct?
A. That's Mr. Hughes' opinion.
Q. And you would agree, again, that, assuming Mr. Hughes is correct, that -- that in his opinion this is a significant step towards proving that cigarette smoking causes cancer; correct?
A. That is what Dr. -- what Mr. Hughes has written here, but I'm not sure I support that view.
Q. Well if in fact --
A. What I told --
Q. -- it's indicated that cancer was produced, you would agree that certainly it is a significant step; correct?
A. If indeed it had.
Q. In any event, you would agree that this research was so important that nothing should be done to suppress it in any fashion; correct?
A. Correct.

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Q. And you would also agree that nothing should be done to counter it by trying to undercut its credibility; correct?

A. I think it suggests that a broader-scale study should be undertaken.

Q. Next I'd like to show you a document that's been previously marked as Plaintiffs' Exhibit 1080.

Sorry.

This is a document that's Bates stamp numbered 50 -- I believe that's a 1990368 through 0369. It's dated November 4th, 1970.

Have you ever seen this document previously?

A. Yes.

Q. When did you first see it?

A. I can't remember.

Q. Has it been a number of years ago?

A. I don't -- I don't --

I can't tell you.

Q. Is it --

A. I expect within the last year.

Q. Is a copy of this document in the files of the CTR?

A. I think so. That's where I saw it.

Q. Okay. It states --

A. No, I don't know where I saw it. Could have

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been shown me by counsel.

Q. Are any of the people who are cc'd at the end of it CTR employees or not?

A. No.

Q. This is the meet -- minutes of meeting to discuss results of experiments with smoking dogs conducted by Dr. Oscar Auerbach; correct?

A. Correct.

Q. This isn't a purely scientific discussion; is it, sir?

MR. MERRITT: I'm going to object to the form of the question.

A. Well there are industry representatives there and members of the CTR staff.

Q. There's also members of the independent law firm that had represented and continues to represent the tobacco industry in its ongoing smoking-and-health litigation, Shook, Hardy & Bacon; correct?

A. Correct. And as well as people from the Philip Morris legal department, apparently.

Q. And also Dr. Fagan, who's the gentleman who wrote the memo that we looked at previously; correct?

A. I believe so.

Q. Apparently what they're discussing here is what point should be raised with Dr. Auerbach after his

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presentation at the N.C.I. on November 9th; correct?
A. That's what it purports to do.
Q. And this is a discussion that was held preliminarily to a presentation to be made by Dr. Auerbach to the Tobacco Working Group at the National Cancer Institute on November 9th of 1970; correct?
A. Correct.
Q. And four of these individuals are industry representatives who are going to participate in that working group; correct?
A. I guess so.
Q. So it appears that they're meeting to try to figure out how they're going to handle and/or attack Dr. Auerbach's findings; correct?
A. Uh-huh.
THE REPORTER: Your answer?
THE WITNESS: Yes.
Q. First thing they're going to do is -- is to suggest that the beagle is a poor choice for an experimental animal; correct?
MR. MERRITT: I'm going to object. You're just asking him --
The way you're phrasing these questions, you're asking him to speculate as to what happened. If you're asking him what this memo says, that's one

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thing, but I think the other is highly objectionable.
Q. This memo indicates that the first thing they're going to do is to suggest to Dr. Auerbach that the beagle is a poor choice for an experimental animal; correct?
A. Well it doesn't say they're going to suggest anything to Dr. Auerbach at all. It says, "On a purely medical/scientific basis, the beagle is a poor choice for the experiment at hand. The behavior of the cells in the lungs and the breathing characteristics of beagles (dogs) are so totally different from those of man that any results obtained are subject to serious question."
Q. Why don't you look on the previous page. It says, "The medical people at the meeting, namely, Fagan, Kreisher, Lisanti, Hockett and Sommers, emphasized the following points which should be raised with Dr. Auerbach after his presentation at the N.C.I. on November 9th;" correct?
A. That's right, and then they go on to make a medical/scientific observation.
Q. The beagle is an accepted experimental animal; correct?
A. Well the results with beagles have never been very conclusive. In the --

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In this era, 40 years ago, it was a -- an animal that was fairly widely used. Almost nobody uses them any more.

Q. But it's certainly at least as good an animal to use as mice or hamsters; correct?

A. I'm not sure about that. Inbred strains of -- of mice are probably preferable today.

Q. But not necessarily back at this time; correct?

A. No.

Q. And you understand that the industry has always been relatively critical of the mouse painting studies; correct?

A. No, that's a different matter.

Painting what? Painting spots on mice? I think we're all critical of that.

Q. And you understand that that was an accepted method for determining the carcinogenesis of a substance back in the '50s, '60s and '70s; correct?

A. It was widely used.

Q. And widely accepted; correct?

A. Well no, because there were serious questions about whether the skin of a mouse is equivalent to the respiratory epithelium of a man.

Q. But it was still an accepted practice; correct, sir?

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A. It was -- it was widely employed. As I say, the scientific results were not necessarily accepted.
Q. In fact, the industry has long wanted inhalation testing, and yet that's exactly what Dr. Auerbach gave them; correct?
A. Correct.
Q. Dr. Sommers also wanted these gentlemen who were part of the Tobacco Working Group to be critical of the smoking technique because they used the trachea; correct?
A. Correct.
Q. However, it was reported that the dogs were docile and friendly and appeared to enjoy the smoking; correct?
A. It is so reported.
Q. Under "Examination of Presumably Cancerous Tissues" it states, "In the several presentations which Dr. Auerbach has made regarding the experiments, he has shown slides of what he maintains are cancerous tissues." Correct?
A. That's the statement.
Q. "In medical terms these are referred to as squamous cell carcinoma." Correct?
A. Yes.
Q. Squamous-cell carcinoma is a carcinoma that

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appears in the lungs of man as well; correct?
A. Yes.
Q. Adenocarcinoma also appears in the lungs of man; correct?
A. Yes.
Q. Apparently the basic criticism here isn't whether the slides show what he says they show, but whether the slides are of a good photographic quality; correct?
A. Well they're --
If they're such poor photographic quality, you can't tell what they show.
Q. In fact the article, the paper was -- did appear, apparently, in the Archives of Environmental Health; correct?
A. It's written here. I did not know the name of the journal.
Q. Do you think this was an acceptable function for the CTR, to get together with their lawyers before meetings, such as the Tobacco Working Group, to try to put together a plan to influence how research is going to be viewed by the public?
A. I don't think that this was an attempt to influence how research is going to be viewed by the public. I think this was an attempt to do a critique

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of this particular project, which apparently was not very well done.

Q. Well, but it appears to be at odds with what we've seen stated internally by the company in their own internal documents as to how they viewed it; correct?

A. Well I --

The principal criticisms that are leveled here were by Dr. Sommers, and Dr. Sommers is one of the most respected pulmonary pathologists in the world.

Q. And a paid employee of the tobacco industry at this point in time.

A. He was a -- he was --

No. He was chairman of the Scientific Advisory Board. He was not a paid employee.

Q. Eventually became a paid employee; didn't he?

A. He did ultimately, but he wasn't at this time. So --

Q. When did he first become a paid employee?

A. I can't tell you that. Probably 10 years later.

Q. Was he your predecessor?

A. Yes.

Q. How long was he at the position before you succeeded him?

A. That's what I don't know. Because if I knew

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that, I could tell you what year he was employed.

MR. O'FALLON: Let's go off the record for a second.

THE REPORTER: Off the record, please.

(Discussion off the record.)

(Deposition recessed at 5:14 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of JAMES F. GLENN at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 281 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at New York, New York, this 3rd day of September, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, JAMES F. GLENN, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 281, and that said transcript is a true and correct, full and complete transcription of my deposition except:

JAMES F. GLENN
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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